







CZECHOSLOVAK  
DEMOCRACY  
*at Work*



# CZECHOSLOVAK DEMOCRACY *at Work*

*by*

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## P R E F A C E

DR. TÁBORSKÝ, in this volume, has done a great service to students of government in this country. He has presented them with a planned and properly articulated account of the structure and operation of Czechoslovak democracy, under the constitution of 1920 and under the body of practices and conventions which grew up round that constitution. His account is in some sense official; but it is also objective and critical. He is by training a lawyer, and his interpretation is thus naturally legal; but he has also been concerned in affairs, and he has thus been able to add to his legal interpretation a large and salutary measure of political appreciation. Nor has he been only concerned with interpretation and appreciation of what *is*. He has also dealt, in his final chapter, with the problem of what *is to be*: he has attempted, with a prophetic eye, to forecast the lines which future development may possibly take.

The writer of this preface attempted lately, in a contribution offered to a volume of essays to be presented to President Beneš on the occasion of his sixtieth birthday, to draw a comparison between British and Czechoslovak democracy. He would have succeeded infinitely better in the comparison which he attempted to draw if he had been able to use Dr. Táborský's succinct and yet comprehensive study. Hitherto there has been but little material in the English language on which a student of Czechoslovak government could draw. It has been a sad lacuna. The Czechoslovak Republic, through the course of its history from 1918 onwards, was a valuable laboratory of constitutional experiment. The constitution itself was a notable blend of French and American ideas with the native genius of Czechoslovakia. The further development of the constitution, and the accretion of practices and conventions around it, added other noteworthy features. In its party system, in its use of proportional representation, and in its adoption of the unique institution of *Pětka*, or "The Five," Czechoslovakia offered remarkable material to the student. The Constitutional Court and the Advisory Council for Economic Affairs were also devices of government which demanded attention and study. The place of the President, his position *de jure*, and the position which he held *de facto*, were all matters of lively interest; and indeed, as the author explains in his final chapter, they are matters which are likely to be of an even livelier interest in the future. Finally there was the great problem—which still remains a problem—of decentralization, or devolution, or possibly even of federalism. It is a problem well known to Englishmen whose memories go back to the days when "Home rule" stood in the forefront of our political struggles. In Czechoslovakia, which like the

United Kingdom is a multi-national country, the problem has been sadly and tragically accentuated. The struggles of Czechoslovakia to deal with that problem deserve our sympathetic study. Indeed they deserved it years ago—in 1938 and in the days before 1938. Our statesmen might have acted more wisely if they had known more of the thorny problems with which they were then confronted.

What has been said already will be enough to commend to the reader this account of "Czechoslovak Democracy at Work." But one other word may be added in justice to Dr. Táborský's country: in justice to its first great President, Thomas Masaryk, and in justice to his successor, Eduard Beneš. There were "founding fathers" present at the birth and during the growth of Czechoslovak democracy. There were men who brought to politics a large and liberal spirit—men, we may even say, who brought a conscious philosophy to the making and working of Czechoslovak government. Thomas Masaryk had been steeped in the thought of Plato: he had also, by his struggles in his own country and his *Odyssey* of travels abroad, learned to know the spirit and the aspirations of the contemporary world. Eduard Beneš, in his turn, by his struggles and his *Odyssey*, learned to know the moving ideas of modern life. The government of a country which has been guided by two such men has a deep and special interest for any student of government.

ERNEST BARKER

CAMBRIDGE

*December*

## CONTENTS

CHAPTER	PAGE
Preface by Sir Ernest Barker	5
Introduction	11
<b>I. The Executive</b>	<b>17</b>
<b>THE DUALISM OF EXECUTIVE POWER</b>	<b>17</b>
<b>1. THE PRESIDENT OF THE REPUBLIC</b>	<b>19</b>
<i>The Rights and Duties of the President in Terms of the Constitution</i>	19
<i>The Powers of the President According to Other Laws</i>	22
<i>The President's Part in Emergency Powers</i>	22
<i>Conclusion</i>	23
<b>2. THE CABINET</b>	<b>24</b>
<i>Legislative Initiative</i>	24
<i>The Power to Issue Decrees</i>	25
<i>The Referendum</i>	26
<i>Ministers in Council and as Heads of Departments</i>	27
<b>3. THE RELATIONS BETWEEN THE HEAD OF THE STATE AND THE CABINET</b>	<b>29</b>
<i>The President's Power to nominate and dismiss the Cabinet</i>	29
<i>The Responsibility of the Government to Parliament</i>	30
<i>Ministerial Countersignature</i>	32
<b>II. The Legislature</b>	<b>34</b>
<b>1. LEGISLATIVE ASSEMBLIES AND THEIR FORMATION</b>	<b>34</b>
<i>The Two Chamber System</i>	34
<i>Legislative Centralization</i>	36
<i>The Electoral System</i>	37
<i>The Principle of Proportional Representation and its Effect in the Field of Political Practice</i>	37
<i>Other Basic Principles of the Czechoslovak Electoral System</i>	41
<i>“Fixed-Order” Lists of Candidates</i>	42
<b>2. COMPETENCE AND PROCEDURE</b>	<b>44</b>
<b>A. Competence</b>	<b>44</b>
<i>Legislative Activity</i>	44
<i>Parliamentary Control of the Government</i>	44
<i>Parliament as a Court of Penal Jurisdiction</i>	47
<i>Parliament as “Plaintiff” before the Constitutional Court</i>	47
<i>Parliament as Co-Administrator</i>	48

## CHAPTER

## PAGE

1. <i>The Participation in the Conclusion of International Treaties</i>	48
2. <i>Participation in a Declaration of War</i>	49
3. <i>Participation in the Appointment of State Functionaries</i>	49
<i>Presidential Elections</i>	49
<i>Parliament's Concurrence in the Appointment of the Judges of the Constitutional and Electoral Courts</i>	51
<i>Parliament as an Autonomous Body</i>	53
B. <i>Procedure</i>	54
<i>Provisions of the Constitution</i>	54
<i>Rules of Procedure</i>	54
3. CZECHOSLOVAK MEMBERS OF PARLIAMENT, THEIR RIGHTS AND OBLIGATIONS	57
<i>Immunity</i>	57
<i>Incompatibility</i>	57
<i>Trust of Conscience and Party Instructions</i>	60
<i>The Czechoslovak M.P.</i>	62
4. THE PARTICIPATION OF THE EXECUTIVE IN LEGISLATIVE ACTIVITY	64
<i>The Summoning, Prorogation and Dissolution of Parliament</i>	64
<i>Legislative Initiative</i>	67
<i>The Signing of Statutes, the Legislative Veto and the Legislative Referendum</i>	67
1. <i>The Signing of Statutes</i>	67
2. <i>Veto</i>	68
3. <i>The Referendum</i>	69
<i>Contacts between the Executive and the Legislature</i>	69
<i>Between the President and Parliament</i>	69
<i>Between the Cabinet and Parliament</i>	70
5. THE PERMANENT PARLIAMENTARY COMMITTEE	71
<i>Function and Composition</i>	72
<i>The Permanent Committee in Practice</i>	73
III. The Constitutional and Electoral Judicature	74
1. THE CONSTITUTIONAL COURT	74
<i>The Prescriptions of the Constitution</i>	74
<i>The Constitutional Court Act</i>	75
<i>General Characteristic of the Constitutional Court</i>	75

CHAPTER	PAGE
<i>The Inactivity of the Court</i>	76
<i>A General Evaluation of the Czechoslovak Experiment</i>	77
2. THE ELECTORAL COURT	78
<i>Constitutional Prescriptions</i>	78
<i>The Electoral Court Act, 1920</i>	79
IV. The Political Party System	83
1. THE RISE OF THE POLITICAL PARTY SYSTEM IN BOHEMIA AND MORAVIA UNDER AUSTRIA-HUNGARY	84
2. THE CHIEF POLITICAL PARTIES AND THEIR CHARACTERISTICS	85
<i>Parties Representing the Czechs, Slovaks and Carpathian Ruthenians</i>	86
<i>The German Parties</i>	91
<i>The Hungarian Parties</i>	93
<i>The Czechoslovak Political Parties after Munich</i>	93
3. THE CHARACTERISTIC FEATURES OF THE CZECHOSLOVAK POLITICAL PARTY SYSTEM	94
<i>Party Domination of Czechoslovak Public Life</i>	94
<i>The Plurality of Political Parties</i>	95
<i>The Party Confusion</i>	96
<i>Rigid Party Discipline</i>	97
<i>The Relative Stability of the Political Parties</i>	98
<i>No real Divergence in Fundamentals</i>	99
<i>The Typical Czechoslovak Political Party Member</i>	100
V. The Mutual Relations of the Executive, the Legislature and the Political Parties	102
1. THE CABINET RULES PARLIAMENT	102
2. THE GOVERNMENT OF POLITICAL PARTIES	103
<i>The "Five"</i>	104
3. THE COALITION SYSTEM	106
<i>The "Swing of the Pendulum"</i>	108
4. THE INFLUENCE OF THE PRESIDENT	111
VI. Local Government	115
<i>Centralism and Regionalism in the Czechoslovak Constitution of 1920</i>	116
<i>Provincial Government</i>	118
<i>District Administration</i>	120
<i>Communal Administration</i>	121

CHAPTER	PAGE
<i>Financial Self-administration</i>	123
<i>The Citizen and the Bureaucracy in Local Government</i>	124
<i>Summary</i>	125
<i>Local Government in the Liberated Territories</i>	125
<b>VII. Civic Rights and Their Protection</b>	<b>129</b>
<i>Human and Political Rights</i>	129
<i>Minority Rights</i>	129
<i>Economic and Social Rights</i>	130
<i>The Protection of Civic Rights. The Czechoslovak Supreme Administrative Court</i>	131
<b>VIII. The Civil Service</b>	<b>136</b>
<i>Its Origins</i>	136
<i>The Bureaucratic hold on Public Life</i>	137
<i>Classification</i>	137
<i>Recruitment</i>	138
<i>Training</i>	141
<i>Pay, Promotion and Legal Status</i>	142
<i>The Civil Servant and the Public</i>	143
<i>General Appreciation of the Czechoslovak Civil Service</i>	144
<b>IX. Czechoslovak Democracy under the Strain of the War</b>	<b>146</b>
1. THE "SECOND REPUBLIC"	146
2. THE CZECH "PROTECTORATE" AND THE SLOVAK "REPUBLIC"	147
3. THE CZECHOSLOVAK GOVERNMENT ABROAD	148
<i>The State Council</i>	149
<i>The Juridical Council</i>	150
<i>The Supreme Audit</i>	152
CONCLUSION	152
<b>X. A General Appreciation of Czechoslovak Democracy and its Prospects for the Future</b>	<b>154</b>
<i>General Appreciation</i>	154
<i>Prospects for the Future</i>	156
<i>A. Problems Raised by the Political Party System</i>	156
<i>B. Should the Régime be Parliamentary or Presidential?</i>	157
<i>C. Decentralization and Self-Government</i>	158
<i>D. Amplification of Social Rights and Reorganization of National Economy</i>	158

## INTRODUCTION

OUT of the moral and political desolation in Europe which reached its climax in 1938-39 one thing stands pre-eminent amidst the ruins—a lighthouse in the darkness. It is the vigour of Czechoslovak democracy. This little island of democracy in the middle of an angry totalitarian sea surging with aggressive nationalism, racialism and anti-semitism, succeeded in holding on to its democratic freedom, while other democracies of Central Europe were sinking one after the other into decay and oblivion. It held on to its democratic ideals even while the hairy hand of pan-German greed was already stretching across its frontiers and while at the other end of the country revisionist Hungary was licking her lips in pleasant anticipation of spoil. Even after her fatal mutilation Czechoslovakia still tried to hold on to what was left of T. G. Masaryk's Republic in spite of relentless outside pressure.

How did this young composite Republic succeed in accomplishing this lesser miracle? What underlies Czechoslovakia's vigorous democracy, the heart of which still pulsates strongly after six years of Prussian ruthlessness? The explanation is simple: Czechoslovak democracy lies deep in the thoughts and hearts of all the Czechoslovak people. It is no empty phrase, it is a solid reality, an expression of the Czechoslovak people's traditional aspirations.

The Czechoslovak nation clings ferociously to its freedom. This applies of course to every nation which is worthy of the name. Yet this passion for freedom is perhaps stronger in the Czechoslovak people than in many others. It is fundamental to their nature. It derives from their thousand-year-old history, and their exposed position in the heart of Europe. From as early as the tenth century—and earlier—they have waged relentless warfare against German expansion. Sometimes it has been open warfare, sometimes freedom has been bought at the cost of their cattle and silver. Sometimes they have been reduced to calling up troops for their powerful neighbour. But always there was the will to preserve their unity as a nation against the storming of the Germanic hordes. What greater proof of their longing for freedom is needed than the fact that after three hundred years of Austro-German domination, after three hundred years of systematic germanization, the Czechoslovak people were still capable of successfully seizing the first chance of freeing themselves immediately after the last World War?

Czechoslovaks are a tenacious people. They are jealous of their rights, and will go to any length to defend them. Even during periods of absolutism those Czechoslovaks who enjoyed certain privileges held on to

them at the cost of their own lives, irrespective of whether they were millers, freeholders, or the frontiersmen of Chodsko, the historic frontier bastion of south-west Bohemia. Czechoslovaks are very sensitive to injustice, or anything which they regard as injustice. They are willing to bear extreme hardships if others will share them. But the moment they realize that some are enjoying undeserved privileges then there is trouble! They yield to no nation in their passion for fair play.

The Czechoslovak people have a thorough respect for the rights of minorities. There is no better proof of this than the attitude of Czechoslovakia towards her national minorities, who enjoyed greater privileges than those which international treaty required the Republic to concede. They were greater than the privileges accorded to national minorities in any other state, with the exception of Switzerland and the Soviet Union.

The Czechoslovaks are essentially a disciplined nation. It is true that they are somewhat excitable, passionate in discussion, and are capable of bitter quarrelling. They are rather dogmatic in their political views, but on major issues they do know how to come to terms and find a practical basis for common action. How else could they have persuaded all their political parties, bitter opponents, faultfinders and bickerers during the elections, to sit round a table as soon as the struggle for votes was over in order to create and carry out a joint government policy? This shows the Czechoslovak preference for common sense and realism over the tendency towards theory and doctrine, which is otherwise all too common throughout Slavdom. Hence the Czechs are sometimes described as the Scots amongst the Slavs. Political compromise became the obvious line of action, and this line was accepted by all. Thanks to this principle and the respect shown to it, political parties, however varied and often divergent their programmes—the socialists, the liberals, and the catholics, the representatives of workers, employers, factory owners, and small craftsmen—could all join to form a stable coalition able to steer the ship of State through the most tempestuous seas.

Culturally Czechoslovakia stands high. Social contrasts do not mar the country. She has a large middle class with very small strata of rich and poor. Only the nationality problem and its exploitation from abroad by the Republic's enemies has seriously disturbed the calm of her civic life. "Free institutions," says J. S. Mill, "are next to impossible in a country made up of different nationalities." Czechoslovakia succeeded in maintaining them despite her ethnic heterogeneity; and only foreign intervention destroyed them.

These factors on the whole provide a moral, political, psychological and social basis which is particularly propitious to a democratic system of government. They combined to create a first-rate political climate for its

successful growth, the more so as the country had the good fortune to have in her first two Presidents, T. G. Masaryk and Dr. Edward Beneš, leaders of exceptional ability with unique personal qualities and a wealth of political experience. It is not therefore surprising that the new Republic succeeded in building up a healthy, well-balanced and on the whole a successful constitutional system.

It is upon the constitutional basis of Czechoslovak democracy, its juridical framework and its working in actual political practice, that we shall concentrate in the chapters which follow. Constitutions cannot, however, grow out of nothing. They are built up gradually piece by piece and the process may be long and painful. The life of the nation as a whole plays a part in their creation. They are an integral part of every nation's civilization—and, moreover, an exceedingly important part. Happy are those nations which have been able to build up that precious political heritage in decades or centuries of freedom and independence. Czechoslovakia, alas, was not one of these fortunate ones. The Czechs had, it is true, a considerable amount of practical experience in local government even under the Austrian régime. They had a good school of democracy in their innumerable voluntary organizations, such as the well-known Sokol movement and other gymnastic organizations. Yet, when the hour of liberation came in 1918, having had no independent State for the last three hundred years, they had no previous constitutional experience of their own such as would have aided them in framing the fundamental statutes of their new Republic. Before proceeding to our main theme let us see first of all in which direction the reborn State looked for its sources of further guidance.

The reply is at hand. The makers of the Czechoslovak Constitution naturally turned to the shining examples of the great democracies of the West. It is therefore comprehensible enough that the Czechoslovak system of parliamentary democracy is very similar to the parliamentary democratic régimes of Western Europe. It was in France that, during the last World War, a handful of Czechoslovak patriots under the leadership of T. G. Masaryk and Dr. Edward Beneš, the first two Presidents of the Czechoslovak Republic, laid the foundations of a new state of Czechs, Slovaks and Ruthenians which, after three hundred years of national subjugation, arose as if by a miracle from the ruins of the Hapsburg Empire. In the capital of the great democracy of America its independence was formally declared for the first time in 1918. In Great Britain, which T. G. Masaryk had then chosen for his chief seat, and which Dr. Edward Beneš visited regularly, Czechoslovakia's affairs received the fullest possible support. It is therefore not surprising that the young Czechoslovak State drank copious draughts from these three powerful

springs of modern political ideology and made its democratic arrangements in accordance with these great exemplars.

The political sympathies of the Czechoslovak people were divided about equally among their three powerful friends and helpers. Their Constitution, however, tended to imitate that of France, especially in respect of its fundamental issue, in the relationship between the Executive and the Legislature. In shaping this relationship, which is no doubt both the corner-stone and the Achilles heel of modern democracies, the Czechoslovak Constitution of 1920 bears few traces of American influence. The American type of presidential democracy seems to have had little influence on those who framed the Czechoslovak Constitution. The German Weimar Constitution had come into being some six months earlier. That Constitution deliberately introduced a number of elements suggestive of a presidential régime. Yet Czechoslovakia preferred to maintain the classical tradition of parliamentary democracy as represented by the French and British systems.

Although the Czechoslovak Constitution consciously followed that of the French, it possesses certain important features of its own. Even where the two constitutions are formally alike or similar, constitutional practice and political necessities have created for both of them different constitutional conventions, filling their written framework with different living tissue and injecting their arteries with different blood. The Czechoslovak parliamentary régime has thus developed into an institution of independent growth, with its own special problems, achievements and shortcomings. It is a matter of common experience that similar laws and institutions work out differently in different settings. In some cases they may fail to work altogether, while in others they produce the most satisfactory results. Hence it is sometimes said that a constitution should always be made to measure. Geographical position, differences in social structure and in economic conditions, the ethnic composition of the population, the quality and nature of political parties and traditions, differences of national character and temperament, in short the individual political climate of this or that country—all these factors determine the final moulding of a constitution.

Our aim will therefore be twofold: (1) to describe the legal framework of Czechoslovak democracy as provided in the Constitution of 1920 and other fundamental laws appended thereto—concentrating mainly upon such constitutional features as are peculiar to it, and distinguishing it from similar western European systems (e.g. the French and British); (2) to portray its dynamic rather than its static features, and to consider how it functioned, how it applied to special Czechoslovak conditions, how it strengthened and guaranteed the essence and vitality of Czechoslovak

democracy, and the degree to which it approached the ideal of government of the people, by the people, and for the people. We shall not shrink from pointing out such defects as existed in Czechoslovak democracy, and those of its features which in our view should be avoided in the future.

These questions will be dealt with under the following headings.

- I. The Executive.
- II. The Legislature.
- III. The Constitutional and Electoral Judicature.
- IV. The Political Party system.
- V. The Mutual Relations of the Executive, the Legislature and the political parties.
- VI. Local government.
- VII. Civic Rights and their Protection.
- VIII. The Civil Service.
- IX. Czechoslovak Democracy under the strain of the war.
- X. A general appreciation of the Czechoslovak system of Parliamentary Democracy and its prospects for the future.



## THE EXECUTIVE

## THE DUALISM OF EXECUTIVE POWER

THE highest governmental and executive power in Czechoslovakia is shared by two organs: The President of the Republic and the Government (Cabinet). In this respect it is similar to all other republics of a parliamentary type. Yet the provisions determining their mutual relationship differ fundamentally in Czechoslovakia from those governing the French Constitution and others framed on its plan.

The Czechoslovak system of governmental and executive power is founded on the "principle of duality," according to which all executive power is divided between the Head of the State and the Cabinet, both of which enjoy full legal competence within their respective spheres. This meant, however, that Czechoslovakia lacked that unity of governmental power which is the hall mark of the executive régimes of Western democracies.<sup>1</sup>

The Czechoslovak President is Head of the Republic; he is the first citizen of the State. He cannot, however, be held to be head of the State's *administration*, for this function, as we shall see later, is in fact vested in the Cabinet, whereas the President's prerogatives lie only in such specific powers as are granted him under the Constitution, or are subsequently conferred upon him by statute.

This replacement of legal unity in administration by a dualistic system is not peculiar to Czechoslovakia. Executive dualism of this type is a characteristic feature of Central European constitutions in general. We meet with the same principle, for instance, both in the Weimar Constitution and in the federal Austrian Constitution of 1920. But in the Czechoslovak Constitution the principle is expressed in a more decisive manner and carried out with greater consistency. Hence the Czechoslovak Constitution may be described as the prototype of a modern dualistic

<sup>1</sup> In no parliamentary democracy, not even in France, is the Head of the State called upon to deal with *all* the administration; legislation delegates a number of administrative functions to other organs. It is evident that the Head of the State is excluded from such activity, and in this way executive power is divided. However, in so far as supreme executive power is *de jure* centred around the Head of the State, there can be no question of any governmental dualism, whichever body is *de facto* stronger in the actual conduct of affairs. For the President of France, see Esmein, *Elements*, II (1928 edition, p. 312).

democratic constitution, a model capable of serving as a lesson in administrative dualism at work.

In a later chapter we shall deal with the consequences arising out of this dualism. At the moment it is enough to say that these consequences are negative rather than positive, and that dualism in executive power is decidedly one of the shortcomings of the Czechoslovak Constitution. It may therefore be asked why the makers of the Czechoslovak Constitution turned from their Western models in settling this particular issue.

The official report on the final draft of the Czechoslovak Constitution provides a partial answer. Papers published in Czechoslovakia by the drafters of the Constitution, or by others who played some part in its framing, explain the rest.

Both these sources clearly show that the final adoption of dualism was due in the main to a reaction against everything which bore, or seemed to bear any taint of monarchism.<sup>1</sup> The Czechoslovak people's experience of the Austro-Hungarian monarchy impelled the authors of the Constitution to go to the other extreme, and in doing so they went further than was perhaps wise. Their new Constitution limited the powers of the Head of the State to a greater degree than in other republican constitutions.

President Masaryk was well aware of this, and did not disguise the fact that he was not satisfied regarding the constitutional limitation of his rights. "In the first exhilarating movement towards democracy, little attention was given to the function of the President." Such was his delicately worded complaint in replying, on the occasion of the tenth anniversary of Czechoslovak freedom, to the congratulations offered him by the President of the Chamber of Deputies. This contrasts strangely with what the *Rapporteur* of the Constitutional Committee had to say on the subject when the matter was discussed in the Constituent Assembly: "The Constitution gives our President tremendous power, making him a very strong factor in the complex of checks and balances without which no ordered State can exist."

Yet, later on, Professor Hoetzel, one of the chief authors of the draft Constitution, fully admitted the misgivings with which the problem of presidential powers had been approached. "We were confronted," he said, "with a great problem when we came to discuss the competence of the President of the Republic. If the Constitution could have been made to apply solely to the first President, the National Assembly would have

<sup>1</sup> This problem has presented itself in practically all the new democracies which came into being after the last war, especially in ex-monarchical States. The Left Wing parties were everywhere unwilling to add to the powers of the Head of the State. (See Gordon, *Les nouvelles constitutions européennes et le rôle du chef de l'Etat*, p. 10.)

been more generous in the powers they vested in him. But a constitution has to be framed on a permanent basis, and must be applicable to average Presidents. We endeavoured to remove from it everything reminiscent of the monarchy. Hence it was decided that the full scope of governmental power should be vested in the Cabinet, and that the President should have only such rights as were expressly accorded him in the Constitution itself, or in the statutes promulgated by the National Assembly after 15 November, 1918."

### I. THE PRESIDENT OF THE REPUBLIC

Having indicated the main principle by which the highest executive power in Czechoslovakia was divided between the Head of the State and his Cabinet, we will now summarize the President's chief prerogatives.

#### THE RIGHTS AND DUTIES OF THE PRESIDENT IN TERMS OF THE CONSTITUTION.

The Constitution outlines the President's rights and duties as follows:<sup>1</sup>

##### *In International Relations.*

The President represents the State in its relations with other states. He negotiates and ratifies international treaties. Commercial treaties, or treaties which impose financial, personal or military burdens on the State or its citizens, and treaties by which State territories change hands, however, can only be concluded with the consent of the National Assembly.

The President receives and appoints Ambassadors and Ministers.

He declares the existence of a state of war; he declares war with the previous consent of the National Assembly, and submits terms for a concluded peace to the Assembly for their approval.

##### *In Civil Administration.*

The President appoints and dismisses the Prime Minister and all other ministers, and determines their number. He decides which of the members of the Government shall be the Heads of the various ministries.<sup>2</sup> He has the right to summon the Cabinet or its members to conference.<sup>3</sup> He has further the right to be present at, and preside over, meetings of the Cabinet, and to demand from it and from its members written reports on matters within their jurisdiction.<sup>4</sup>

On the proposal of the Cabinet he appoints university professors and higher civil servants.

He makes grants of money and pensions in special cases on the proposal of the Cabinet.

<sup>1</sup> The main provisions are contained in Clause I of Article 64.

<sup>2</sup> Article 72.

<sup>3</sup> Article 83.

<sup>4</sup> Article 82.

*In the Military Sphere.*

The President is Commander-in-Chief of all the armed forces of the Republic. He nominates, on the proposal of the Cabinet, the higher officers in the Armed Forces.

*In the Legislative Sphere.*

The President summons, prorogues and dissolves the National Assembly. He is *obliged* to summon both Chambers to two sessions in the course of the year: a spring session in March, and an autumn one in October. He has further the *right* to summon them for extraordinary sessions whenever he may deem it necessary. He is *obliged* to summon the Assembly within fourteen days if at least one half of the members of either Chamber apply to the Prime Minister stating the object of such summoning. If four months have passed since the last regular session it is sufficient if two-fifths of either Chamber put forward this request. Should the President fail to take action, the Chambers may meet by themselves within fourteen days on being summoned by their Speakers.<sup>1</sup> The President may prorogue the Assembly for one month at most, but only once in the course of each year.<sup>2</sup> The President can exercise the right to dissolve the Assembly when and as often as he pleases, but not in the last six months of his term of office. New elections must take place within sixty days of the dissolution of Parliament or expiry of the parliamentary electoral term.<sup>3</sup>

He signs the bills passed by the National Assembly and his signature must be accompanied by that of the Prime Minister and the ministers entrusted with their execution.<sup>4</sup> He also signs the bills passed by the Diet of Carpathian Ruthenia<sup>5</sup> and countersigned by the Governor of that province. The decisions of the Permanent Parliamentary Committee must also bear his signature (besides that of the Prime Minister and at least half of the total number of the members of the Government).<sup>6</sup>

He has no legislative initiative, for this is entirely in the hands of

<sup>1</sup> Article 28.

<sup>2</sup> Article 30.

<sup>3</sup> Article 31.

<sup>4</sup> Article 51.

<sup>5</sup> Carpathian Ruthenia was an autonomous part of the Czechoslovak Republic. On the basis of the Treaty of St. Germain of 10 September, 1919, Article 3 of the Constitution accorded it the right of autonomous legislation in local government, linguistic, educational, religious and any other matters transferred to it by law. The centre of this autonomous legislation was to be a special Ruthenian Diet. During the life of the pre-Munich Republic this could not be instituted as it was feared that the autonomy might be abused, since the cultural level of the population, which had been grossly neglected under Hungarian administration, was low.

<sup>6</sup> The Permanent Parliamentary Committee sat when the National Assembly was not sitting, and was entitled during that period to make provisions with statutory validity. We shall deal with this question more closely later when we come to consider the legislative power proper.

Parliament and the Cabinet.<sup>1</sup> The President has, however, the right of exercising a *suspensive veto* on bills passed by the National Assembly. He can return a Bill passed by Parliament together with his observations within a month of its presentation. The President's veto can be overridden either by an absolute majority of all the members of both Chambers, or by a three-fifths majority of all the members of the Chamber of Deputies (the Lower House of the Parliament). In either case this is done by ballot taken on roll call. The President's veto has, however, an *absolute* character in respect of bills passed by the Diet of Carpathian Ruthenia.

Finally the President has the right to report orally or in writing to the National Assembly on the condition of the Republic, and to recommend for the consideration of the National Assembly such measures as he deems necessary and useful.

*In the Judicial Sphere.*

Acting on the proposal of the Cabinet, the President appoints all higher judges.

He has full power to grant amnesties in penal and disciplinary cases. He does not, however, possess such powers in the case of ministers charged by the Chamber of Deputies or sentenced by the Senate for the violation of constitutional and other laws.<sup>2</sup>

*Other Powers of the President.*

Of the other provisions of the Czechoslovak Constitution relating to the status of the President we only mention the most important here. They will prove to be analogous to parliamentary republican practice elsewhere.

The President is elected for seven years by a joint session of both Houses of the National Assembly. A majority of members of both Chambers must be present, and a three-fifths majority of votes is required for the President's election. Should two ballots fail to yield the majority required, a third ballot is held on the two candidates who have secured the highest number of votes at the previous balloting. A simple majority of votes suffices for the election in the third ballot.<sup>3</sup> No one can be elected more than twice in succession, though an exception was made in the case of the first President. A President remains in office until his successor is elected.<sup>4</sup>

If, for less than six months, the President is unable to execute his duties, his functions devolve on the Cabinet, which in its turn may delegate them to the Prime Minister.<sup>5</sup> Should the President on grounds of ill-health or other incapacity be unable to execute his duties for a period

<sup>1</sup> Article 41.

<sup>2</sup> Article 103.

<sup>3</sup> Articles 56 and 57.

<sup>4</sup> Article 58.

<sup>5</sup> Article 60.

of more than six months, and should the Cabinet in the presence of three-quarters of its members so decide, the National Assembly is to elect a Vice-President.<sup>1</sup> The Vice-President remains in office until the emergency which led to his election is over.<sup>2</sup> The same principles apply to his election as apply to the election of the President.<sup>3</sup>

The President must not be a member of the National Assembly. Similarly the Vice-President during his period of office may not exercise his rights as a member of the National Assembly.<sup>4</sup> After his election the President takes an oath before the National Assembly to have due regard for the welfare of the Republic and its people, and to abide by the Constitution and other laws.<sup>5</sup>

For acts done by the President in the execution of his office, the Cabinet and not the President is responsible.<sup>6</sup> Any governmental or executive act made by him must be countersigned by a responsible minister.<sup>7</sup> The only charge that can be made against him is one of high treason. This charge must be laid before the Senate by the Chamber of Deputies. Punishment can consist only in the loss of presidential office and permanent disqualification from re-election to the Presidency.<sup>8</sup>

#### THE POWERS OF THE PRESIDENT ACCORDING TO OTHER LAWS.

As we have seen, the Constitution allows further powers to be given to the President by statute. Naturally this is possible only in so far as such powers have not already been conferred by the Constitution itself upon any other organ of government. This provision for supplementary statutes to increase the President's powers makes it possible for Parliament to shift competence from the Cabinet to the Head of the State except where the Constitution provides otherwise.

From 1920 to the time of Munich a few statutes gave the President certain special functions, such as the Armed Forces Act, 1920, the Military Discipline Act, statutes regarding decorations, the nomination of certain State functionaries, etc. These are, however, minor powers, and do not in any sense affect the position of the Head of the State in relation to the other constitutional organs.

#### *The President's Part in Emergency Powers.*

One emergency power of the President should be mentioned in this connection, namely the part he played in some exceptional cases of delegated legislation. The power to issue decrees "for the execution of statute and within their limits" is normally exercised by the Cabinet alone.

<sup>1</sup> Article 61.

<sup>2</sup> Article 61.

<sup>3</sup> Article 62. No Vice-President has ever been elected.

<sup>4</sup> Article 63.

<sup>5</sup> Article 65.

<sup>6</sup> Article 68.

<sup>7</sup> Article 68.

<sup>8</sup> Article 67.

<sup>9</sup> We shall say more about this under (2).

When, however, at times of economic and political crises the Government was entrusted with special emergency powers for issuing decrees having statutory validity, the President's signature was made one of the requisites for their validity. Such was the case in respect of the two Emergency Powers Acts of 1933.<sup>1</sup> The same principle was applied in the Defence of the State Act, 1936, by which the Cabinet was empowered in exceptional circumstances such as mobilization and war to issue decrees with statutory validity. These emergency decrees, taking the place of Acts of Parliament, could be issued only with the express consent of the President of the Republic, and could not affect or alter the terms of the Constitution.

Thus the Head of the State acquired the right to share in the powers of delegated legislation in civilian matters, a prerogative which had previously been entrusted exclusively to the Cabinet. The President furthermore exercised certain powers to issue orders of a military nature in his capacity of Commander-in-Chief of the Czechoslovak Armed Forces.

This participation in delegated legislation did not mean that the President's authority was increased at the expense of the Cabinet. We must remember that any measures or decrees issued on the basis of the above-mentioned emergency provisions were a substitute for statutes, i.e. they were acts for which the signature of the President was required in addition to the signature of the Prime Minister and the ministers entrusted with their execution. The result was thus only a diminution of the powers of Parliament and a corresponding increase in those of the Cabinet.

It is also worth mentioning here that the original draft of the 1920 Constitution as presented to Parliament was more generous to the President than the final one. It proposed to give him power to issue decrees on all matters relating to the civil administration. "He (the President) shall decide the principles regarding the organization of the Civil Service, in so far as this falls within the province of the Executive and is not expressly reserved to other organs." This right was subsequently entrusted to the authority of the Cabinet alone.

#### *Conclusion.*

The foregoing summarizes the chief legal powers and obligations of the President of the Republic. As can be seen, his authority is of much the same order as that enjoyed by the Heads of the State in other parlia-

<sup>1</sup> The first of these Acts authorized the Cabinet in case of war, or the threat of war, to pass emergency measures placing a temporary ban on certain civic rights normally guaranteed by the Constitution. The second Act authorized the Cabinet during a period of exceptional economic conditions to modify tariffs, regulate prices and the conditions of production and distribution in industry, commerce and agriculture, and to maintain economic stability.

mentary democracies of the Western type. There are two notable differences, however.

(a) The dualistic division of supreme governmental and executive powers as between the Head of the State and the Cabinet makes the position of the Czechoslovak President constitutionally weaker than the position of, say, the French President. This is particularly illustrated by the fact that the Czechoslovak President enjoys only such powers as have been expressly conferred upon him by the Constitution and other Acts of Parliament. All other powers are reserved to the Cabinet, which therefore must be considered as the real Head of the Executive in Czechoslovakia.<sup>1</sup>

(b) The President of the Czechoslovak Republic enjoys no right of initiating legislation. This right belongs to the Cabinet. Here again his authority is more restricted than that of the French President, and is in this particular aspect rather similar to that of the President of the U.S.A., without, of course, being compensated by the latter's other powerful prerogatives.

## 2. THE CABINET<sup>2</sup>

The Cabinet enjoys "all governmental and executive powers except such powers as the Constitution or the laws of the Czechoslovak Republic subsequent to 15 November, 1918, expressly reserve to the President of the Republic."<sup>3</sup> No comment is called for regarding this provision except the few observations which we have already advanced on the dual character of the Executive. Through this general clause of competence the Cabinet became the chief organ of government in all civil matters, so eclipsing the Head of the State.

It would be impossible—and in any case needless—to describe the authority of the Cabinet, since it comprises everything which falls within the province of executive power and which has not been reserved to the Head of the State. But it is worth while mentioning three important prerogatives of the Cabinet, wherein the Czechoslovak system of government notably differs from those of Western Europe. They are the Cabinet's right to initiate legislation, its right to issue decrees, and its right to proclaim a referendum.

### *Legislative Initiative.*

As we have already seen, the right to submit bills to Parliament is shared by Parliament (i.e. its members) and the Cabinet, but not by the President

<sup>1</sup> The constitutional and real authority of both Presidents will be contrasted in the fifth chapter.

<sup>2</sup> In Czechoslovakia all ministers were members of the Cabinet. There was no distinction, as in Britain, between ministers of Cabinet rank and others.

<sup>3</sup> Article 64, clause 2.

of the Republic. If it is asked why the Czechoslovak Constitution departed from its French model in respect of this point, the official report on the final draft of the Constitution speaks for itself: "After mature consideration the draft does not assign to the President the right to initiate legislation. In any case it is not practicable even when a constitution expressly grants such a right to the President as in France. In our view it is sufficient if the right of initiative is granted to the Cabinet, upon whose actions the President can exercise due influence through the power provided in Point 6 of Article 64, and again in Article 82. The Cabinet is convinced that the President's right of initiative might place him in an undesirable position."

This plea does not seem convincing, and in a sense it is contradictory. If, as the report asserts, the right to initiate legislation on the part of the Head of the State is not practicable, it is difficult to see how it could place the President in an undesirable position. Other parliamentary democracies have not gone out of their way to limit the powers of the Head of State in this respect. France certainly has not done so. Moreover, by referring to Point 6 of Article 64 dealing with the recommendations which the President may make to Parliament, and Article 82 on the right of the President to take part in Cabinet discussions, the report is on unstable ground. The first provision is inadequate, since the recommendations of the President must first of all be discussed with the Cabinet, and must bear ministerial countersignature. It is therefore difficult to see how the President could exercise any influence on the Cabinet through the medium of Parliament. The second condition (i.e. the right to take part in the Cabinet's sessions) is automatically granted to the French President over and above his right of legislative initiative.

Nevertheless, Czechoslovak constitutional practice has overcome this limitation on presidential prerogative. The practice of bringing Government bills to the notice of the President before they were laid before Parliament enabled him to express his views on the preliminary draft of any bill and to make them known to the Cabinet. Whether the draft was thus laid before the Head of the State prior to its parliamentary stage however depended on the goodwill of the Cabinet and upon its desire to avoid the presidential veto in extreme cases.

#### *The Power to Issue Decrees.*

Under the 1920 Constitution decrees can only be issued "for the execution of a specific statute, and then only within the framework of that statute."<sup>1</sup> Both Cabinet and President were duly considered when the Constitution was first drafted. It was then laid down that Government

<sup>1</sup> Article 55.

decrees should be made by the Cabinet as a whole, and that they should be signed by the Prime Minister or his Deputy, and at least half the members of the Cabinet, including those trusted with its execution. On the other hand, as we have seen, the President was given the power to issue decrees in matters relating to the organization of the Civil Service. His decrees, too, had to be countersigned by the Prime Minister and the other ministers as prescribed for decrees issued by the Cabinet. These provisions were dropped in the final version of the Constitution, with the result that the President's right to issue decrees became inoperative. The whole power of issuing decrees in the realm of *civil* administration and most of the authority to issue decrees in military matters was consequently exercised by the Cabinet. The President of the Republic merely retained the right to issue orders by virtue of his office of Commander-in-Chief of the Czechoslovak Armed Forces.

The absolute predominance of the Cabinet over the President in this important sphere of governmental powers naturally greatly strengthened the position of the Cabinet in relation to the Head of the State in all departments of the civil administration. In Czechoslovakia as elsewhere, with the rapid evolution of political and economic relations and their growing complication, delegated legislation became increasingly common. Owing to these constitutional arrangements this development tended further to strengthen the Cabinet and to weigh down the scales of executive dualism in its favour.

### *The Referendum.*

The referendum would normally be discussed under the heading of Legislation. As, however, it was never used in Czechoslovakia, we shall merely mention the point in passing. The referendum as set out in the Czechoslovak Constitution demonstrates once again the principle of executive dualism and the obvious advantages enjoyed by the Cabinet over the Head of the State. That is why we consider it under this heading. The 1920 Constitution deals with the matter as follows; "Should the National Assembly reject a Government Bill the Cabinet may resort to a referendum to decide whether the rejected Government Bill shall become law. Such a Cabinet resolution shall be unanimous."<sup>1</sup>

The right to resort to a referendum, therefore, belongs to the Cabinet and not to the Head of the State. There is a certain inconsistency in this legal construction. Since the purpose of the referendum is to resolve a possible conflict between the Cabinet and Parliament, the power to resort to a referendum should be in the hands of a constitutional body which is

<sup>1</sup> Article 46.

able to dissolve Parliament. In Czechoslovakia this power is entrusted to the President.

The referendum is more restricted in Czechoslovakia than elsewhere. It is solely a Cabinet prerogative, it requires the Cabinet's unanimity and it can be resorted to only if Parliament refuses to pass a Government bill. However, throughout the twenty years of its constitutional life serious consideration was never given to the use of the referendum. No public support has ever been given to the idea, and the need for it never seems to have arisen in Czechoslovakia. Direct democracy was never made a political catchword and the public showed a marked preference for democracy by representation. The whole Czechoslovak political system, as will appear later, gave no backing to the use of the referendum. The measure therefore remained a dead letter. Had the Cabinet failed to secure the passage of a Bill which it considered essential—a situation largely discounted by party coalition, and the domination of Parliament by political parties—other methods were available for resolving the deadlock. Either Parliament could be dissolved forthwith, or a vote of censure passed on the Government.

#### *Ministers in Council and as Heads of Departments.*

Before we leave this survey of constitutional provisions dealing with the Executive, we should study here briefly one important aspect of it; namely, the dual position of individual ministers as members of the Ministerial Council and as Heads of departments. It will still be a question of describing the provisions of the Constitution, but at the same time we shall have to devote more attention to the way in which the letter of the Constitution was shaped to suit State needs and through the intervention of political factors. In fact, it will be a foretaste of the problems which will be discussed more extensively in Chapter V.

The Constitution envisages two forms of governmental procedure, one which involves the activity of members of the Cabinet as individual Heads of the various departments of administration, and another which involves decisions by the Cabinet as a collective body, acting in Council. Hence members of the Cabinet have a dual function: one individual and the other collective. The sole exceptions are ministers without portfolio, who, since they are not responsible for any special department, exercise only the collective function.

The juridical basis of the activity of individual ministers is found in two provisions of the Constitution.<sup>1</sup> The first lays it down that "the competence of ministries shall be determined by statute." No such statute has ever been passed. The complexity and variety of the work and

<sup>1</sup> Articles 85 and 72.

functions of individual departments make it difficult, if not impossible, to define and allocate all functions by statute. Even so, this clause does at least guarantee to each department its existing powers, and safeguards them against any attempt of the Cabinet of the day to shift powers from one department to the other by mere administrative decisions. The second provision lays it down that the direction of a department may be accorded to or withdrawn from individual ministers by the President. These two clauses taken together guarantee the *de jure* though not the political independence of each Head of a department against the combined action of the Cabinet sitting in Council.

On the other hand, the collective function of the Cabinet is constitutionally defined<sup>1</sup> as follows:

“The Cabinet shall deliberate as a body particularly upon:

(a) Parliamentary Bills, Government decrees and proposals for the exercising of presidential powers under Article 47.<sup>2</sup>

(b) All matters of a political character.

(c) The appointment of judges, civil servants and army officers of the sixth class and higher grades,<sup>3</sup> in so far as such appointments are within the competence of the central authorities; proposals for the appointment of officials nominated by the President of the Republic.”

This Article is somewhat vague, and clause (b) in particular is liable to various interpretations, as in a modern state a “political character” can easily be attributed to everything. Further, as is evident from the word “particularly” in the introductory phrase of the Article, the definition is by no means exhaustive. Because of this the legal relationship between the individual authority of a minister and the collective authority of the Cabinet is far from clear. It is hard to determine exactly how much authority may be withdrawn from a minister and handed over to the Cabinet, and there is no agreement among Czechoslovak jurists on this question. The problem seems to be how far the Cabinet, sitting in Council, may overrule an individual decision by one of its members in his capacity of departmental chief.

Whatever the legal position, practice tends more and more to favour the Cabinet as a whole at the expense of the individual minister. From deliberating on the matters which according to the Article cited had to be decided collectively, the Cabinet began to encroach with ever-

<sup>1</sup> By Article 81.

<sup>2</sup> This Article relates to the President's suspensive veto against laws voted by the National Assembly.

<sup>3</sup> This means the three highest grades in the administrative class and the highest grade of the executive class: generals and colonels in the Armed Forces.

growing insistence on the province of individual departments. It even discussed in Council matters which were pre-eminently of an administrative character, and which could scarcely be said to possess the political character originally contemplated.

The Czechoslovak coalition system, by virtue of which the Cabinet represented four, five or more different political parties, was largely responsible for this state of affairs. Another reason was the dual nature of the Executive already mentioned. Since the Constitution did not place executive responsibility in the hands of one supreme authority, i.e. the President, such responsibility had to be taken by the highest collective organ, namely the Cabinet. The consequence was a salutary co-ordination of departmental functions with the general line of policy and a greater degree of unity in the administration. Such co-ordination was achieved, however, at the cost of slowing down procedure. It meant prolonged negotiations between the various parties of the coalition and a continuous and at times a very difficult search for a basis for compromise. It meant that some of the disadvantages involved in a collective decision and bargaining were thereby transferred from Parliament to the Cabinet, from the Legislature to the Executive, a fact which might well have had an undesirable effect upon the efficiency of the executive.

### 3. THE RELATIONS BETWEEN THE HEAD OF THE STATE AND THE CABINET

We will now conclude this chapter with a few words on the constitutional relationship between the President and his Cabinet, an important factor in the smooth working of a democracy. In this chapter we will deal with the constitutional provisions on the subject, while Chapter V will show how the system has worked in practice.

Apart from the general principle of executive dualism referred to above, the three chief legal factors determining this relationship are the following: (a) The President's power to nominate and dismiss the Cabinet as well as to assign individual departments to its members; (b) the responsibility of the Cabinet to Parliament; (c) ministerial countersignature.

#### *The President's Power to Nominate and Dismiss the Cabinet.*

We have mentioned the constitutional basis of this presidential power. As in other democratic constitutions, it is very important; theoretically perhaps the most important of all. Indeed, in view of the dualistic structure of executive power, and the limitation of the President's power in civil administration, it appears legally to be more important in Czechoslovakia than elsewhere. Of the powers accorded to the President of the

Republic by the Constitution only three fall within the province of internal civil administration: the nomination and dismissal of ministers, the nomination of high civil servants and the granting of donations and pensions in special cases. The last is, of course, unimportant. On the other hand, the nomination of high civil servants is very important, since it enables the Head of the State to control and influence the selection of those persons who are to lead and direct the whole Civil Service. In practice, however, it is a purely negative power. The President merely has the power either to approve or reject a candidate proposed by the Cabinet. If the President rejects the Cabinet's first proposal he must await a new one. The President's authority is thus weakened by the fact that he has no power to choose civil servants himself.

Therefore, the sole *legally* unfettered right the President has in the sphere of civil administration is his prerogative of nominating and dismissing the Prime Minister and other members of the Cabinet, and of assigning to them, and depriving them of, office in the Government departments. This is the only function where he can act as a *legally* free agent in civil matters. I have emphasized the word *legally*; the degree to which the President can independently use this constitutional right in *political* practice has in the past depended upon other circumstances. Particularly upon the nature of the relationship between the President and the political parties of the government coalition. Against their will and without agreement with them it is doubtful if he could appoint a single minister. But this we shall discuss more fully later on. We would only add that despite these limitations President T. G. Masaryk, and later President Beneš, was able to realize something of his ideal of a mixed Cabinet consisting both of politicians and specialists. Thus the Foreign Ministry was almost continuously headed by specialists; both Dr. Beneš and Dr. Krofta filled the office of Foreign Minister chiefly because they were specialists. The same was true to a lesser extent of the Ministry of Finance.

#### *The Responsibility of the Government to Parliament.*

The Chamber of Deputies has the power to pass a resolution of no confidence in the Government. The Cabinet in its turn is entitled to lay before the Chamber of Deputies a proposal for a vote of confidence. If the Chamber expresses its lack of confidence, or rejects the Cabinet proposal for the vote of confidence, the Cabinet is obliged to place its resignation in the hands of the President. The President then decides who should conduct the affairs of the Government until a new Cabinet is formed. Thus the Czechoslovak Republic became one of the many parliamentary democracies, for Parliament was not only the highest organ of legis-

lation, but also as a result of the political responsibility of the Cabinet to Parliament, legally the centre of gravity of the whole government.

The political responsibility of the Cabinet to Parliament had a fundamental influence upon the shaping of the relation between the Executive and the Legislature. Coupled with the power to affect a parliamentary dissolution it constitutes the final means by which a possible lack of harmony between these highest organs of power in the State can and must be resolved, should other less radical political means prove inadequate. These two institutions, taken together, form the constitutional backbone of the whole system of parliamentary democracy, and the manner in which they are made use of largely determines the success or failure of this type of democratic government.<sup>1</sup> The relationship between the Executive and Legislature has also, however, a decisive influence upon the relationship between the Cabinet and the Head of the State, and that is why we must refer to it here.

The freedom from political responsibility afforded to the Head of the State in all parliamentary democracies makes the Cabinet responsible for all his official acts. The Czechoslovak Constitution offers no exception to the rule. As ministerial responsibility for the President's acts can be given outward expression by Parliament through a vote of no confidence, it is easy to see that the responsibility of the Cabinet to Parliament, while it weakens the position of the former in relation to the latter does on the other hand strengthen the Cabinet's position in relation to the Head of the State. This is a phenomenon to be met with in all democracies of a parliamentary type. All the chief authorities on constitutional law and political science concur in this. In practice this simply means that the party claiming responsibility is always the stronger. Clearly the Cabinet, who may have to answer to Parliament for something the President has said, done or failed to do, and may therefore be threatened by a vote of no confidence and loss of office, is always morally and politically in a very strong position in relation to the Head of the State. The Cabinet can suc-

<sup>1</sup> A typical instance is furnished by the comparison between Great Britain on the one hand and France and a number of other parliamentary democracies on the Continent on the other. In the first case a successful régime was created, with a strong Cabinet and a critical, but on the whole manageable, Parliament; in the other, the outcome was a chronic weakness of the Executive, which found itself at the mercy of a capricious and moody Parliament. We cannot examine the manifold causes of these differences. They are treated in all standard works dealing with modern democracy, from Bryce's weighty treatise, *The Modern Democracies*, to such recent works as Giraud's *Le pouvoir exécutif dans les démocraties d'Europe et d'Amérique*, Dr. Edward Benes' *Democracy Today and Tomorrow*, Rappard's *The Crisis of Democracy*, and a number of works by Laski, Jennings, Keith, Barker and others.

cessfully oppose the President's wishes even in the sphere of his own legal competence, provided that they can prove that it would be difficult for them to justify his action to Parliament. In fact, by appealing to their political responsibility the Cabinet can exert an effective political influence upon the President and even persuade him to act contrary to his own wishes.<sup>1</sup> This conclusion follows with inescapable logic from the very nature of the constitutional conception of a parliamentary democracy, and is therefore of universal validity. Only exceptional circumstances and other influences operating in the opposite direction can weaken its effect. Such was the case in Czechoslovakia where, thanks to a variety of political circumstances, the position of the Head of the State up to the end of the pre-Munich Republic remained high above the level accorded to it by the written rules of the Constitution. We shall deal with this aspect in Chapter V.

#### *Ministerial Countersignature.*

The third factor in the legal relationship between the President and the Cabinet is that of countersignature. Here, too, the Czechoslovak Constitution follows Western European models, and it seems to be even stricter than the French. It expressly states that every governmental or executive act of the President must be countersigned by a responsible member of the Cabinet if it is to be valid, while the French Constitution finds it enough to say that every presidential act shall be countersigned by a minister. Although the political result of both the Czechoslovak and the French stipulations is undoubtedly the same, the Czechoslovak Constitution is more explicit, since it expressly makes the validity of presidential acts dependent upon ministerial co-signature. It may be seen from this how carefully the framers of the Czechoslovak Constitution defined this particular limitation of the presidential authority so that no misunderstanding might arise.

The requirement of ministerial countersignature embodied in the 1920 Constitution means a further weakening of the President's position.<sup>2</sup>

<sup>1</sup> This was brought out strongly as early as 1920 by Poincaré (in his letter to the newspaper *Le Temps* of 9 August, 1920): ". . . Entre les ministres et lui, le président, qui aura le dernier mot chaque fois que s'élèvera un dissensitement? . . . Entre un signataire qui doit compte au Parlement de la décision prise et un signataire qui n'en doit compte à personne quel est celui qui, en conseil des ministres, l'emportera? Sans doute le président a la ressource extrême d'accuser son collaborateur à la démission et de le remplacer. Mais si, le lendemain, le démissionnaire porte la question à la tribune, le président ne peut se justifier que par l'intermédiaire et à la condition de trouver un nouveau ministre qui l'approuve et soit assuré d'une majorité." See also Gordon, op. cit., p. 161, and further works mentioned above.

<sup>2</sup> Gordon, discussing the effect of the demand for ministerial countersignature, with the French system in mind, observes: "This principle must inevitably lead to the

In some ways it is a more drastic measure than that defining the Cabinet's obligation to answer in Parliament for all acts of the President. The result of the latter limitation of the President's authority is of a purely political character; the President could legally carry out a given act, even if opposed by the Cabinet on the grounds that the latter would not accept responsibility for the President's actions before Parliament. The necessity for ministerial countersignature, on the other hand, limits him, not only politically but legally, for without it none of his public acts can be valid.

Hence in one way the requirement of countersignature restricts the President more than the Cabinet's responsibility for his actions. The principle of the Cabinet's responsibility for Presidential acts enables the Cabinet *as a whole* to oppose the President's action. Owing to the necessity for ministerial countersignature he can be checked in the execution of his constitutional rights by *one single member* of the Cabinet. True, it was maintained that a presidential act could be countersigned by a minister in charge of a different department from the one involved. The President could thus overcome the opposition of one minister by securing the signature of another. It goes without saying, however, that the President could have used this method only at the risk of incurring a Government crisis. Further, in view of the increasing ascendancy of the collective principle in Czechoslovak constitutional practice and the predominance of the Cabinet as a whole over individual ministers, it is doubtful whether this method would have worked.

Yet what makes the constitutional demand for ministerial countersignature so powerful a weapon in the hands of the Cabinet is, in Czechoslovakia as elsewhere, the political responsibility of the Cabinet for the President's acts. Had this not been the case, a minister would have been able to refuse to countersign a presidential act only if his personal integrity was threatened, that is to say, if by appending his signature to a presidential act he would have been guilty, either intentionally or through gross negligence, of violating the Constitution or other laws. He would not have been able to refuse his countersignature by appealing to his political responsibility towards his Cabinet colleagues. All he could have done would be to oppose the President on the grounds of personal conviction.

fact that ministers will thrust the Head of the State into the background, since they cannot give their countersignature except in the case of an act for which they are willing to accept responsibility before Parliament, i.e. an act of which they personally approve" (see p. 157, op. cit.).

## CHAPTER II

### THE LEGISLATURE

In the previous chapter we referred to such provisions relating to legislative powers as also define the functions of the Executive. We shall now examine the remaining provisions concerned with Czechoslovak legislative machinery and see how that machinery operates.

#### 1. LEGISLATIVE ASSEMBLIES AND THEIR FORMATION

Legislation for the whole of the Czechoslovak Republic is exercised by a National Assembly composed of two Chambers: the Chamber of Deputies and the Senate.

##### *The Two Chamber System.*

Following the example of the West, Czechoslovakia adopted a two-chamber system. Explaining to the House what he expected from a second Chamber, the spokesman of the Constitutional Committee quoted Maine's saying "Not a rival infallibility, but an additional security." At the same time, however, identical principles were adopted for determining the membership of both Chambers. Both deputies and senators are elected on the basis of an universal, equal, direct and secret ballot. The sole difference lies in the fact that a higher age limit is set for elections to the Senate. Every person who has reached the age of twenty-six has the right to vote for members of the Senate, whereas twenty-one is the minimum age for electors to the Chamber of Deputies. Any person can be elected to the Senate who has attained the age of forty-five, whereas the minimum age for a deputy is fixed at thirty. The term of office in the Senate is fixed at eight years, whereas the corresponding maximum term is only six years in the Chamber of Deputies.

The framers of the Constitution of 1920 ensured through these provisions that the Upper House of the Czechoslovak Parliament should be as democratic a body as the Lower House. They thereby avoided the undemocratic elements which characterize the structure of the Upper Chambers of some of the older democracies. On the other hand, their Upper Chamber lost its political *raison d'être*. The Czechoslovak Senate exhibited precisely the same party structure as the Chamber of Deputies. The senators were governed by the same rules of strict party discipline as the members of the Lower Chamber, and the voting in both Houses

was in fact nothing but a duplication of party procedure. An astute observer of Czechoslovak political life characterizes the uselessness of the Second Chamber as follows: "Matters are first agreed upon among the parties of the coalition. The coalition then supplies ready-made gramophone records which are played over in turn in the first and second Chambers." The power of dissolution has always been applied simultaneously to both Houses of Parliament, so that in practice the election of both Chambers took place at the same time. The Second Chamber was thereby robbed of the moderating influence which it was expected to exercise at times of radical electoral changes through the fact that it was to be elected independently two years after elections had been held for the Lower Chamber.

The superfluous character of the Second Chamber was clearly contemplated by some members of the Constituent Assembly even while the draft of the Constitution was being discussed. One prominent social-democratic deputy pointedly remarked: "In my view it will be a still-born child." The truth of this observation was amply demonstrated by political practice. Disputes arising between the two Houses were isolated events, unconnected with those fundamental political issues which are usually involved in other democracies when a conflict arises between their Upper and Lower Chambers. For this reason many people urged the abolition of the Senate, and substituting for it an advisory body on economic questions, or a committee of experts of one type or another. It looks therefore as though the new Czechoslovak Republic is scarcely likely to adopt bicameralism of the earlier type.<sup>1</sup>

Relationships between the two Chambers were regulated as follows: "A bill passed by the Chamber of Deputies becomes law in spite of rejection by the Senate when the Chamber of Deputies reaffirms its decision by an absolute majority of all its members. If, however, the Senate rejects such a bill by a three-quarters majority of all its members, it nevertheless becomes law if the Chamber of Deputies persists in its decision by a three-fifths majority of all its members."<sup>2</sup>

Nothing need be added to this provision. Linked with the one which gives the Chamber of Deputies the exclusive power to overthrow the Cabinet, it guarantees the complete predominance of the Lower over the Upper Chamber. This predominance is evident from a series of

<sup>1</sup> In the concluding chapter on the future of democracy in the Czech edition of his *Democracy Today and Tomorrow*, Dr. Beneš expressly said of the future of the Czechoslovak Senate (p. 244): "Assuming that we introduce administrative and legislative decentralization for the provinces and that we will therefore have provincial Diets, I consider it just if in the future we have a central Parliament consisting only of one Chamber."

<sup>2</sup> Article 44.

further provisions of the Constitution which are irrelevant to our present study.<sup>1</sup>

#### *Legislative Centralization.*

Legislation in Czechoslovakia was firmly centralized, and all legislative power was vested in the central Parliament. In this respect Czechoslovakia resembles France and Great Britain. The tendency was still further confirmed by an express provision of the 1920 Constitution<sup>2</sup> annulling the former provincial Diets and their functions. (Under Austria-Hungary the so-called historic provinces, Bohemia, Moravia and Silesia, had their own Diets with a certain very limited legislative activity.) The authors of the Czechoslovak Constitution were of the opinion that in a small country like Czechoslovakia there was nothing to be said in favour of decentralizing the legislative authority. They argued that the Republic was small enough for legislation to be carried out by a central body, and that there was no need for regional legislation. They aimed at unifying legislation to the utmost,<sup>3</sup> and it would have been odd indeed had they done otherwise. The Republic had inherited in its territory Austrian, Hungarian and for a short time even German, legal systems, as well as three different types of provincial legislation. Examples from all parts of the world pointed to an increasing tendency towards *legislative* centralization even in States usually adduced as examples of widespread and far-reaching regionalism. It is not therefore surprising that the authors of the 1920 Constitution were not inclined to leave open further possibilities for legal disintegration within the State.

Carpathian Ruthenia provided the one exception. As we have seen,<sup>4</sup> this Czechoslovak province was to have its own Diet "competent to legislate in matters of language, education, religion, local administration, and other questions delegated to it by the laws of the Czechoslovak Republic." Yet this provision of the Constitution, as we have already indicated, had not been made effective by 1938, and legislation for this province was still effected in Prague.

<sup>1</sup> Thus, for example, according to Article 44 the Chamber of Deputies can nullify a resolution of the Senate by an absolute majority of all its members. There is a further provision in Article 41 to the effect that Government bills relating to the budget and the Armed Forces must first be submitted to the Chamber of Deputies: Article 43 obliges the Senate to deal within six weeks with any bill which has passed through the Chamber of Deputies. The Chamber of Deputies is allowed three months to accept or reject a bill which has been accepted by the Senate. Article 38 states that the rules of procedure for the Chamber of Deputies apply when both Chambers sit together and that the President of the Lower Chamber always presides over a joint session, the President of the Senate being his deputy, etc.

<sup>2</sup> Article 7.

<sup>3</sup> A special Ministry of Unification was formed for the purpose.

<sup>4</sup> See Notes on page 20.

*The Electoral System.*

Like most constitutions, the Czechoslovak Constitution lays down only the main principles of the electoral system, expressly leaving the elaboration of details to ordinary legislation.<sup>1</sup> In addition to the four basic principles of democratic electoral law—universality, equality, directness and secrecy—the Constitution stipulates only a minimum age for voting. This exhausts its stipulations on electoral matters, with one single exception which must be dealt with at greater length.

*The Principle of Proportional Representation and its Effect on Political Practice.*<sup>2</sup>

Unlike the constitutions which served its authors as a model, the Czechoslovak Constitution makes a definite choice between the two systems of popular representation known in modern democracies as majority representation and proportional representation. Czechoslovakia adopted the second system, thus abandoning here her French<sup>3</sup> and British patterns and inclining rather to the example of the smaller European democracies, which have adopted the scheme of proportional representation. Indeed, as early as 1875 it was a Czech politician, Sládkovský, who was among the first in Central Europe to stand up for the idea of proportional representation. And Czechoslovakia developed this principle to its fullest extent—more perhaps than any other country. The Czechoslovak electoral system gives the parties as exact a proportional representation in all elected bodies as is humanly possible. It is an electoral system of mathematical precision. It found due appreciation even among the most turbulent representatives of national minorities. A German deputy, then a member of the Opposition, paid the system the following compliment. Speaking in Parliament in 1925 he said: "The Czech electoral system has a short but splendid past. It is one of the fairest electoral systems in existence."

The representative bodies emerging from the elections gave a very accurate picture of the political sentiment of the country. The Czechoslovak Parliament was indeed "an exact mirror of the interests and opinions of the nation."<sup>4</sup> M.P.s were returned who were far less dependent upon their electors than is the case when elections are based on the system of majority representation. A number of candidates not returned by their

<sup>1</sup> Articles 12 and 17 of the Constitution expressly refer to "the order of election for the Chamber of Deputies" and "the law regarding the constitution and the competence of the Senate."

<sup>2</sup> The substance of this section has been previously published in the *Journal of Comparative Legislation and International Law*, November, 1944 . . . and is used here with the kind permission of the Editors.

<sup>3</sup> In 1939 France also introduced P.R.

<sup>4</sup> To use the words of Professor Laski.

constituencies secured election in the second and sometimes the third scrutiny, for which the competing parties drew up new lists from those candidates who had appeared in the lists of the first scrutiny. This time, however, they were selected regardless of their original electoral district. Hence many deputies could not be said to be under obligation to any constituency. The Czechoslovak M.P.s, more perhaps than those of any other democratic country, were thus free from the burden of personal gratitude towards their electors. In contrast to the situation in France, they were not obliged to pledge themselves to the particular demands of their constituencies or even the purely personal wishes of their constituents in so far as these came into conflict with considerations affecting the whole State. Such deputies, being less tied to their constituencies, were better able to attend to the affairs of the country as a whole. The Czechoslovak M.P. was less the representative of a given district and of its particular interests than a real legislator and a guardian of democracy who was concerned chiefly and above everything with protecting the interests of the national community as a whole. In this respect Czechoslovak democracy was fortunate in not following the French model, where the dependence of a deputy on his constituency was at times onerous indeed.<sup>1</sup> Further, proportional representation tended in Czechoslovakia, as in other countries adopting proportional representation, to strengthen party discipline,<sup>2</sup> and made the party leaders much more secure against defeat at the polls.<sup>3</sup>

Moreover, it undoubtedly contributed in no small measure to the stability of political conditions, and helped to keep the rate of political development gradual. "Movement," to quote the apposite words of an outstanding Czech political writer, "whether it be for better or worse,

<sup>1</sup> Lowell, *Governments and Parties in Continental Europe*, vol. i, p. 136, furnishes some drastic examples of this: "A few years ago a couple of deputies gave an account at a public dinner of the letters they had received from their districts. Some constituents wanted their representative to go shopping for them; others asked him to consult a physician on their behalf; and more than one begged him to procure a wet nurse, hearing that this could be done better in Paris than in the provinces." Sometimes of course the consequences were more serious. A typical case is mentioned by Giraud in *Le pouvoir exécutif dans les démocraties d'Europe et d'Amérique*, p. 237: "The Tirard government retired on the 13 March, 1890, as a result of a vote of the Senate expressing anxiety on the part of the wine growers of the country about the Government's interpretation of a commercial agreement with Turkey."

<sup>2</sup> Those in France who favoured proportional representation argued that better party discipline would be the result.

<sup>3</sup> The party leaders always occupied top places in the lists of candidates, and thus were returned even if the party was defeated. Even if they were not elected at first, they could get into Parliament on the second or third scrutiny when the outstanding vacancies were filled.

will proceed only in accordance with the slow passage of events. Only that progress will be achieved which is within the comprehension of the majority—and for this one often has to wait a long time. But on the other hand Parliament is protected against foolishness or extravagance unless a real majority of the nation have succumbed to it. It preserves a certain moderation both in good and bad, since the almost inevitable result of proportional representation is the necessity for a coalition in which extremes are equalized." This is indeed what was anticipated and desired by the Constituent Assembly whose Constitutional Committee noted with satisfaction in their report on the Draft of the Constitution that "this consistent striving after the just representation of all minorities and elements will have an influence on the shaping of political relations in the Republic;" that "individual parties, classes and nationalities will be obliged to resort to collaboration and mutual understanding;" and that "an iron necessity will teach the parties to seek a basis for co-operation."

But the system had one fundamental defect: an increased tendency toward schismatism. Under it political parties and groups tended to multiply. Small parties and factions stood a better chance at elections than they would have done under another electoral system. It was sufficient for a given party to poll 20,000 votes in any constituency (which owing to their size was no difficult matter) in order to reap the benefit of "surplus" votes, however negligible, polled elsewhere in the Republic. If the total poll, including the minimum constituency poll of 20,000, was 120,000, a given party could obtain further seats at the second or third scrutiny. This meant that a large number of parties sought to put up candidates in as many constituencies as possible. Hence parties tended to split and multiply indefinitely. An abundance of political parties and groups, the worst defect of Czechoslovak democracy, has always been a striking feature of all Czechoslovak elections.

The first general election was held in the new Republic in 1920. No fewer than 23 parties put up for election, and 17 secured seats in Parliament. Of these 17 parties 8 were Czech and Slovak, 6 German and 3 Hungarian. The most powerful party at the time was that of the Czechoslovak Social Democrats. They obtained one-fourth of all the votes, and secured 74 out of the 281 seats then being contested in the Lower House. This was the highest poll ever obtained by any one party during the twenty years of the Republic, yet the minimum coalition necessary to secure a working Government majority was still a coalition of four parties. The "Red-Green Coalition" was built up out of the Social Democrats, the Agrarians and the Socialists—the Cabinet, consisting of their representatives, together with one National Democrat who joined the Cabinet as a specialist.

· In the second general election held in 1925 seats were allotted as follows:

Of 29 parties, 16 were returned. Of these 8 were Czech and Slovak, 5 German, 1 Hungarian, 1 Polish and one international (Communist). The minimum combination of parties necessary to make a Government majority was five (the Communists could not be considered at that time as a possible partner for any coalition). The Švehla Government put in power by the 1925 election was supported by a coalition of 6 parties (Agrarians, Catholics, Social Democrats, Czech Socialists, Retailers and National Democrats).

For the third general election in 1929 19 lists of candidates were submitted and 16 parties were returned. These were 8 Czech and Slovak parties, 5 German, 1 Hungarian, 1 Polish-Jewish and 1 International (Communist). The minimum grouping to secure a majority coalition this time was one of five parties.

For the last general election in 1935 16 lists of candidates were submitted, some of them representing more than one political party. Fourteen parties had members returned: 8 Czech and Slovak parties, 5 Hungarian and German, and 1 International (Communist). The minimum combination for securing a working majority in Parliament again amounted to no fewer than 5 parties.

This survey speaks for itself. The Government coalition, if it was to secure a working majority in Parliament, had always to be composed of at least four or five different parties. The difficulties hampering the efficiency of the Executive are obvious enough. We shall have more to say about them in Chapter V.

The root of the evil lies outside the scope of constitutional law. The primary causes of the exuberance of political parties must be sought elsewhere—in the people's psychology, in a multiplicity of viewpoints, in intensity of feeling and difference of temperament, in varying degrees of individualism, in the differences of social structure, and in religious heterogeneity. In Czechoslovakia the ethnic structure of the electorate almost trebled the number of parties.<sup>1</sup> There was a marked absence of established party tradition. The foundations of the Czechoslovak party system in the modern sense of the term were first laid around 1900, but the Great War and the national revolution of 1918 completely transformed and revolutionized even these traditions. Further, the Czechoslovaks are slightly more doctrinaire in their outlook and less phlegmatic in temperament than the Anglo-Saxons. Religion as we have seen is another factor emphasizing existing political divisions.<sup>2</sup> But the principle of propor-

<sup>1</sup> In addition to Czechoslovak parties there were independent German, Hungarian and Polish parties, several Ruthenian groups, and one Slovak autonomist party.

<sup>2</sup> Political Catholicism before Munich was a strong plank in the policy of the Czech Clerical Party and Hlinka's Slovak autonomist party.

tional representation did much to strengthen and enhance the disintegrating influence of the social causes of party exuberance because it accorded small parties a maximum prospect of parliamentary representation.<sup>1</sup>

*Other Basic Principles of the Czechoslovak Electoral System.*

The Republic is divided into 22 constituencies for election to the Chamber of Deputies, and 12 constituencies for election to the Senate. The number of seats per constituency is determined by the size of its population, and ranges from six to twenty-four for the Lower House and five to twenty-four for the Senate. The conduct of elections, the counting of votes, and the allocation of seats is carried out by a hierarchy of local, district, regional and central commissions composed of representatives of the parties and presided over by civil servants. Seats are assigned after three scrutinies of the lists of elected candidates. The first lists are drawn up by the regional commission on a strictly numerical basis—so many votes, so many seats. The second lists include parties which secured at least 20,000 votes in any one constituency, and at least 120,000 throughout the country as a whole. These parties are awarded seats according to the number of votes left over to them out of the first list. Party representatives prepare a supplementary list of candidates for these residual votes. They are free to include in these second lists any candidates who appeared in the party's list in any constituency, and this without regard to the candidate's place on the first list. The system thus assures, if necessary, a seat to the party leaders, who under a majority system would have lost their seats had they failed to secure a sufficient number of votes in their own constituencies.

If, as regularly happens, some seats remain unfilled after a second scrutiny, a third is held. Here the parties are divided according to whether they are of Czechoslovak or of minority nationality. The residual votes of those parties that got no further than the first scrutiny are allocated according to their complexion to a group of Czechoslovak parties or to a group of minority parties. The Czechoslovak electoral system thus pre-

<sup>1</sup> It has been pointed out that under Austria-Hungary, although elections to the Austrian Reichsrat and the provincial Diets (Landtage) were held on the majority principle, there was a considerable number of political parties in the Czech lands after 1900. A closer scrutiny of all the imperial and provincial elections of that time, however, reveals that up to 1907 an absolute majority of all the Czech votes was always secured by one party, first by the Old Czech Party, and from 1891 onward by the Young Czech Party. Even later the bulk of the votes was shared by three and at most four political parties, while the other parties polled a negligible number of seats. Further, the electoral results during the first years of party development under a foreign power cannot properly be compared with the conditions under which the Czech and Slovak parties developed in the liberated Republic.

vented the votes of the national minorities from being placed to the credit of the parties representing the Czechs and Slovaks, and vice versa. This is a proof of the considerate and even meticulous regard for absolute justice towards the national minorities which prompted this rather complicated electoral procedure. It is a further indication of the pettiness and baseness of the attacks by German nationalists and Hungarian chauvinists upon the Czechoslovak minority policy.

In Czechoslovakia any person can stand for Parliament who has secured a written recommendation from at least 100 electors whose names appear in the electoral lists. These electoral lists contain, of course, the names of all citizens who have reached voting age. They are open to public inspection every six months, and every citizen has the right to complain if his name has been omitted or if somebody else's name has been wrongly entered. Voting is not merely a right, but an obligation; failure to vote at an election without good reason is a punishable offence. Each party has to deposit a security of 50 per cent of the estimated cost of printing its list of candidates and delivering it to the electors. If a party fails to secure a single seat it is liable to pay the whole of these expenses unless it has secured at least one seat in the preceding general election.

#### *“Fixed-Order” Lists of Candidates.*

Before concluding this brief survey of the Czechoslovak electoral rules we must make a brief reference to a problem which some time ago ruffled Czechoslovak public opinion considerably: the question of “fixed-order” lists of candidates. The Czechoslovak voter had to elect a list of candidates *en bloc*. He could not vote for individual candidates. He had to choose a set of people, and this only in the order in which they were set forth by the party organization. Thus if a Czechoslovak elector wanted to support his party, he quite often had to vote for some candidates with whom he had little sympathy.

These inflexible lists of candidates made voting too mechanical for an educated electorate. To some degree they were humiliating. The elector had scarcely any alternative but returning a party of his liking and thereby mechanically giving his approval to a number of personalities whose names had been placed by the party at the head of the list. Failing this he could either vote for another party or return a blank and invalid ballot paper. True, a candidate could set up as an independent, and do this perhaps more cheaply than in many other democracies. He had only to comply with the few simple conditions laid down by the Constitution and electoral law, to secure a hundred signatures and to pay a low deposit. But electoral practice very clearly showed how theoretical this alternative

was. For an independent candidate would find himself in unequal competition with properly organized parties which had an extensive Press of their own, and were possessed of enormous party resources and a powerful electioneering apparatus reaching out far beyond the purely political sphere to include trades unions, co-operative associations, and even gymnastic societies. With such a handicap, the independent candidate had no real chance and it was quite exceptional for him to succeed in the electoral contest.

Briefly, under such a system, the elector could freely make a choice among a number of political programmes presented to him by various political parties, but he was not in a position freely to select his men. Since, in a democracy, men often matter more than programmes, this limitation certainly cannot be regarded as one of the assets of the Czechoslovak electoral system. Indeed, the Czechoslovak electorate was thereby deprived of what Sir Ernest Barker aptly describes as "the essence of the selective function of the electorate."<sup>1</sup>

Thus the fixed-order lists worked in favour of political parties as against individuals. "They deprive the deputy of his self-reliance and make him indifferent," says a Czech political writer. "They undermine his individual conscience and make him apprehensive regarding the evil permeating his party, because they give all power to the executive committee." Though in our opinion this criticism is rather exaggerated, it has much truth in it.

It is therefore not surprising that more and more voices made themselves heard urging increased freedom for electors. One ultra-nationalist political group used this popular slogan to further its own ends. It entered the general election in 1929 under the ostentatious and misleading name of "The League against Fixed-Order Lists." But the Czechoslovak electorate, being politically mature, saw through this trick, and the "League" secured only three seats. Nevertheless the idea of greater electoral freedom persisted and in 1933 a reform of the electoral system provided, to a limited extent at least, that the elector should be allowed to indicate a preferred candidate on the list which he chose. Thus an elector thenceforth had the right to return both a political party *and* a candidate of his choice. This was a notable step forward. The electorate is now able to modify, though in a very much restricted way, the order of the candidates on the list for which they cast their vote. They can help a well-known candidate to secure a seat, even though he may be low in the list. For the parties were accustomed to include as "draws" at the bottom of their lists people prominent in public life whom they did not particularly want to be returned. The electors felt that they were making a freer decision, and the

<sup>1</sup> *Reflections on Government*, p. 42.

principal shortcoming of fixed-order lists of candidates was thereby removed. It would have been difficult, I think, to go much further in this direction, for otherwise it might have led to other defects, such as vote-splitting, the elimination of outstanding party leaders, and so on. Unfortunately the new system of 1933 applies only to municipal elections, not to general elections for Parliament, where the need for such a reform is much more imperative.

## 2. COMPETENCE AND PROCEDURE

### *A. Competence*

The competence of the Czechoslovak Parliament is fourfold: legislative, controlling, judicial and administrative. To these elements may be added the so-called autonomous activity: the power of both Chambers to regulate their own internal affairs independently of each other.

#### *Legislative Activity.*

The legislative functions of Parliament have already been dealt with, and little need be added. Czechoslovak legislation is fully centralized, and except for autonomous Carpathian Ruthenia it is a monopoly of the central Parliament. Although Parliament can delegate part of its authority to the President and/or the Cabinet and empower them to make emergency decrees of limited validity, nevertheless even at the most critical times the Czechoslovak Parliament held its position as supreme legislator firmly in its hands. In this respect parliamentarianism appeared in Czechoslovakia in a more favourable light than in other European democracies which emerged after the last war, and came near to the high standards of British parliamentarianism. Of course, we do not mean to suggest that Parliament was the main political power in the State, or that it even became master of the Executive. Far from it. As in Britain both the Legislature and the Executive in Czechoslovakia were completely dominated by the political parties. This aspect of Czechoslovak constitutional life will be dealt with in Chapter V.

#### *Parliamentary Control of the Government.*

*The Vote of No Confidence.*—The supreme and most effective weapon in the hands of Parliament is, of course, the vote of censure upon the Government. We have already alluded in Chapter I to the relevant provision of the Czechoslovak Constitution regarding this matter, and to some of its political consequences. We will now add the following three observations:

*First.*—The Czechoslovak Constitution lays down stricter conditions for the vote of no confidence than those prescribed for ordinary legislation. Such a vote has to be moved by at least 100 deputies, an absolute majority of deputies must be present, and the ballot is taken on roll call. The proposal must first of all be referred to a Committee, which has to report on it within eight days. It is interesting to note that this provision of the Czechoslovak Constitution influenced the framers of the Spanish Republican Constitution, which also lays down certain special requirements making a vote of censure by the *Cortes* more difficult.<sup>1</sup>

*Secondly.*—The Czechoslovak Constitution stresses the responsibility of the Government as a whole. It recognizes only the *collective* responsibility of the Cabinet, not the responsibility of *individual* ministers as such. This stipulation differs from the French model, which admits both of collective and individual ministerial responsibility.<sup>2</sup> The difference seems, however, to be only theoretical. Had it come to a practical test in Czechoslovakia it would have amounted very much to the same thing. If the Chamber of Deputies in Czechoslovakia had lost confidence in one member of the Cabinet, either the Cabinet would have had to dissociate itself from him, compel him to resign and request the President to release him, or it would have had to support the minister and take collective responsibility for his action. The fact that the Constitution does not mention anything about the individual responsibility of ministers is further proof of the predominance of the collective principle described in Chapter I. Like the French Constitution, the provisional Constitution of 1919 did distinguish between these two types of responsibility. Yet this distinction was omitted from the 1920 Constitution at the special request of the Cabinet, who argued that as they sit and act as a collective body their political responsibility can only be collective.

*Thirdly.*—The provisions laid down by the Constitution on the political responsibility of the Cabinet to Parliament have never been put into practice. Throughout the existence of the first Republic (1918 to 1938) Parliament never once passed a formal vote of no confidence in the Government. Whenever a Government found that it no longer represented the opinion of the parliamentary majority it retired on its own initiative. Government crises were thus avoided. Socialist-bourgeois Cabinets alternated with purely liberal-bourgeois Governments, Govern-

<sup>1</sup> Cf. Adolfo Posada, *La nouvelle constitution espagnole*, p. 200. The Spanish Constitution is even stricter in that to be valid a vote of no confidence requires a majority of *all* the members of the *Cortes*.

<sup>2</sup> In the same way the Spanish Constitution, though otherwise following the lines of the Czechoslovak Constitution, maintained both categories of government responsibility on the French model.

ments that were exclusively Czech and Slovak were followed, from 1926 onwards, by others that included the German parties, first liberal-bourgeois, then socialist. All these Governments, with the possible exception of Tusar's second Government in 1920, were backed by a reliable coalition in Parliament, even though their majority was at times a small one. On two occasions only, in 1920 and 1926, an interim Cabinet of civil servants took charge with the sole object of gaining the time necessary for the crystallization of a new party coalition in Parliament. Both these Cabinets held office for a very short period. Though composed of civil servants, they acted in close accord with the leaders of the main political parties, and readily yielded to a party Government as soon as it could be brought into being.

The stability of the Governments was remarkable in view of the complicated party conditions and the ethnic composition of the Republic. Seventeen Governments held office during the 20 years of the First Republic. Thus the average life of a Government was fourteen months. This is only half as long as the life of an average British Government, but twice as long as that of a French Government. Moreover, a new Cabinet was frequently a mere reshuffle of the members of its predecessors. Its party composition and policy remained unchanged. These were only technical, rather than political, changes.<sup>1</sup> If we disregard these reshuffles, there were then no more than eight, or nine, radical changes of government, i.e. such as could be said to mean actual change in the party complexion. The stability of the Czechoslovak Executive becomes still more impressive when we consider that in the course of those twenty years Czechoslovakia had only eight Prime Ministers,<sup>2</sup> and only two Presidents.

This does not mean that the political responsibility of the Government to Parliament did not produce similar results in Czechoslovakia to those in other parliamentary democracies. As in other democratic States with a parliamentary régime, and perhaps to an even greater degree than else-

<sup>1</sup> Thus when Tusar's Socialist-Agrarian Cabinet, which had come to power in July 1919, was replaced after the first general election of May 1920 it was by a new Tusar Cabinet with the same political tendencies. In the autumn of 1922 the Beneš' Cabinet was replaced by Švehla's, which was based upon the same political coalition. In December 1925 after the next general election, Švehla was entrusted with the formation of a new Cabinet, again based upon the same coalition, amplified only by the inclusion of the Retailers Party and having a smaller number of Socialist ministers. In February 1932, after the retirement of Udržal's Cabinet there was only a change of Prime Minister, that office being filled by Malypetr, another member of the same party. In November 1935 Malypetr retired, having been elected President of the Chamber of Deputies. His place was again taken by a member of the same party, Dr. Hodža.

<sup>2</sup> Kramář, Tusar, Černý, Beneš, Švehla, Udržal, Malypetr, Hodža.

where, the ever-present threat of parliamentary censure became a weapon by which the political parties dominated the Government. Its effects, both positive and negative, will be considered in Chapter V.

*Questions in the House (Right of Interpellation).*—Another parliamentary weapon of control over the Government's activity is granted by Article 52 of the Constitution, which reads as follows: "(1) Each Chamber shall have the right to put questions to the Prime Minister and other members of the Government on matters within the scope of their competence, to enquire into administration, to elect committees to which the ministers must furnish information, and to adopt public statements and resolutions. (2) The Prime Minister and the members of the Government are obliged to answer questions put to them by members of the two Chambers."

It is evident from this stipulation that parliamentary control of the Government is provided for by the Czechoslovak Constitution as in other democracies of a parliamentary type. How this worked in practice will be dealt with later.

#### *Parliament as a Court of Penal Jurisdiction.*

The penal liabilities of the President and the Cabinet ministers have been dealt with in the first chapter. The power to indict the President on a charge of high treason<sup>1</sup> or to indict individual ministers if either intentionally or through gross neglect they violate the laws of the Republic while acting in their official capacity, is in the hands of the Chamber of Deputies. It can only be exercised, however, in the presence of two-thirds of the members and by a two-thirds majority of those present. The Senate acts as a Court. A statute passed in 1934 lays down details of procedure.

This judicial function of Parliament has never yet been put into practice, and in normal times it is doubtful whether it would ever been exercised. A case for it might have arisen during the present war, when Dr. Hácha, the so-called "Staatspräsident," and the members of his "Cabinet" might have been tried. As, however, Hácha and his ministers cannot be regarded as a Government in terms of the Czechoslovak Constitution, even this case does not arise. More rigorous and summary methods will be used for dealing with them.

We need not pause to consider the judicial activity of Parliament any further. It is very similar to the system used in other democracies, and we cannot derive from it anything special for our picture of the Czechoslovak system of parliamentary democracy.

#### *Parliament as "Plaintiff" before the Constitutional Court.*

At this point we should consider a parliamentary function which,

<sup>1</sup> The President is not punishable for other offences.

though not strictly a judicial function, yet bears on the subject of Parliament's activity in the judicial sphere. According to the Constitutional Court Act, 1920 (of which we shall have more to say in Chapter III), the Chamber of Deputies, the Senate and the Diet of Carpathian Ruthenia (in addition to the three highest courts of the Republic) are empowered to request the Constitutional Court to declare a given statute unconstitutional. This is a new departure in parliamentary practice. Parliament never actually used this power. Indeed, it could hardly be expected that a House of Parliament would publicly accuse itself of having violated the Constitution, rather than change the statute itself. A quarrel on such a subject between two Houses of the same party structure was most improbable, so that the only possible situation which might have necessitated this procedure would have been the need to annul the unconstitutional legislation of the Ruthenian Diet or a complaint from the Ruthenian Diet against an alleged unconstitutional interference by the central Parliament with its right of independent legislation. As, however, the Diet had not yet been established in 1938, even this possibility of bringing the Constitutional Court into action was out of the question.

#### *Parliament as Co-Administrator.*

As with other parliaments, the Czechoslovak Legislature is also called upon to participate in the administration of a few matters. I would say, however, that this participation is smaller than in most other parliamentary democracies. In her Constitution Czechoslovakia carries into effect Montesquieu's principle of the triple division of State authority more thoroughly than most other parliamentary democracies. She is quite satisfied with Parliament's powers of general control over the Government, and does not think it necessary to impose upon the Legislature and Executive the necessity for joint action in particular cases. Three exceptions to this general rule should be described here.

1. *The Participation of Parliament in the Conclusion of International Treaties.*—As has been mentioned in Chapter I, the President of the Republic has the power to negotiate, conclude and ratify international treaties, but must secure the specific approval of the National Assembly in the case of commercial treaties, treaties which impose financial or personal burdens upon the State (especially military burdens), and treaties affecting the boundaries of the State. In this last case approval must be given in the form of a constitutional law passed by a three-fifths majority of all the members in each Chamber. The National Assembly is also required to express its agreement to the conclusion of peace treaties.

The co-operation of the Legislature and the Executive in treaty-making

power worked very smoothly in Czechoslovakia and gave rise to no difficulties. Compared with the American political practice with its occasional bitter controversies between the President and Congress over the ratification of international treaties, this may seem rather surprising. Czechoslovakia was fortunate in that the main lines of her foreign policy and the way in which it was conducted never became the subjects of serious controversies on party lines. From the outset the principal sections of the Czechoslovak people were all united on the path which their new Republic had to tread in her international relations. Thus Czechoslovak foreign policy, handled with deep-seated honesty and brilliant foresight by T. G. Masaryk and Dr. Edward Beneš, was fortunately able to remain above party strife and outside the usual party political bargaining.

2. *Participation in a Declaration of War.*—The President of the Republic may declare war only with the consent of Parliament, for which a three-fifths majority of all the members in each Chamber is required. Similarly, by the provisions of the Armed Forces Act, the President needs the consent of Parliament for a proclamation of mobilization and for certain other exceptional measures of a military nature.

These provisions of the Constitution are on the whole analogous to those of the French constitutional law regarding the *rapports des pouvoirs publics*. Their application never created any difficulties in practice and presents no features of interest.

3. *Participation in the Appointment of State Functionaries. Presidential Elections.*—As already mentioned above, it was Parliament's responsibility to appoint the supreme functionary of the State, the President of the Republic. Here, too, Czechoslovakia followed French practice. Of the three possible methods of presidential election known to modern constitutions, namely election by the people, election by special presidential electors appointed by the people for this purpose, and election by Parliament, the authors of the Czechoslovak Constitution preferred the third. They wanted to make the election of the President a simple proceeding free from popular repercussions. It was thought election on these lines provided better prospects for the choice of a good candidate. Parliament seemed to them a better judge of statesmanlike qualities and political abilities than the electorate, who might more easily have been led astray by a candidate's superficial popularity. A notable Czech jurist observed that Parliament was more likely to base its choice on calm consideration and reason than on emotion, when it elected a president.

Though they cannot be easily disregarded, these reasons are not in my opinion so convincing as to offset certain radical defects inherent in presidential election by Parliament. It is a moot point, beyond the scope

of this study, which of the three methods of presidential election is the best. All we shall do is to consider how far the election of the Head of the State by the Legislature has or has not justified itself in Czechoslovakia.

The Czechoslovak practice appears on the surface to have been an outstanding success. Both the Czechoslovak presidents were personalities of the highest political and statesmanlike stature. Without departing in any respect from the ways and means of pure democracy, both were able to rise above the limitations imposed upon them by the letter of the Constitution. They were even able, with marked success, to avoid coming under excessive party domination. In this respect Czechoslovakia contrasted favourably, it seems, with France, where the President's lack of power was almost an established constitutional convention. Here Czechoslovakia constitutes an example *par excellence* of how different similar institutions may grow, and how different their ultimate results may be if they have to live in different political climates.

This contrast obviously means that other factors must have been at work in Czechoslovakia. The inference is fully confirmed by a close study of the four presidential elections held in Czechoslovakia on the basis of the 1920 Constitution.

From the outset T. G. Masaryk was seen to be irreplaceable. It is no secret that the Agrarians, the most powerful right-wing party, would have preferred to see one of their own men in the presidential chair—someone who would have been a less forceful character than Masaryk. No political group, however, which wished to retain its hold upon the people would have dared to oppose T. G. Masaryk's election and re-election. An excellent proof of this is that the liberal-bourgeois parties repeatedly cast their votes for a President who, although non-party and non-Marxist, held socialist views.

The position was similar on the election of Dr. Edward Beneš in 1935, when President Masaryk resigned for reasons of ill-health. An attempt was made at the time to elect a weaker personality than either Masaryk or Beneš.<sup>1</sup> Behind the scenes the party struggle was a hard one. The leaders of the Agrarian Party were reluctant to lose a unique opportunity of removing this obstacle to their ambitions, and of adding to the Premiership, which had been in their hands practically without interruption since 1921, the Presidency of the Republic as well. In the end, however, Dr. Beneš was elected; no Czech party could ignore the overwhelming will of the people, and that will prevailed.

The inescapable conclusion is that election by Parliament of men of strong individuality as Presidents is due in Czechoslovakia to a happy

<sup>1</sup> A certain member of the Agrarian Party was then said to be hurriedly studying French so as to be able to carry out the representative duties.

concurrence of exceptional circumstances. Once these conditions cease to exist, as one day they must, it cannot be denied that even in Czechoslovakia the election of the Head of the State by the Legislature may lead to a series of presidents of a lesser eminence than that of the first two. The political parties are not in favour of appointing a strong President. Moreover, they will keep on reminding a President not elected by the people which were the parties who put him into power. "Le créateur enchaîne le créature," Redslob aptly remarks,<sup>1</sup> and we cannot help agreeing with him.

During the First Republic there was some agitation for the President to be elected directly by the people. Dr. Benes himself, no doubt against the background of past experience, has expressed himself recently in his *Democracy Today and Tomorrow* in favour of future presidents being chosen either by a direct and universal people's vote or by special presidential electors on the American model.<sup>2</sup>

*Parliament's Concurrence in the Appointment of the Judges of the Constitutional and Electoral Courts.*—Apart from presidential election, the Czechoslovak Constitution does not call upon the Legislature to participate in the appointment of State functionaries, as do for instance the American and Swiss constitutions. But two important modifications to this principle have been made by ordinary legislation.

1. *The Appointment of Judges to the Constitutional Court.*—The Constitution lays down that the President of the Republic shall appoint three out of the seven members of the Constitutional Court (one to be President thereof). The Constitutional Court Act which was passed soon after the Constitution was proclaimed in 1920 called upon Parliament, as well as the Diet of Carpathian Ruthenia, to participate in the act of appointment. The two Houses of Parliament and the Ruthenian Diet were each to nominate three candidates, of whom the President selected one from each group<sup>3</sup>

<sup>1</sup> In *Le régime parlementaire*.

<sup>2</sup> P. 244 of the Czech edition.

<sup>3</sup> I have certain doubts regarding the constitutional validity of this provision. If the Constitution expressly lays down that the right to appoint the three above-mentioned members of the Constitutional Court belongs to the President of the Republic I do not consider it permissible for ordinary legislation to make this right conditional upon proposals. Par. 2 of Article III, which relegated details to ordinary legislation, stated that the Act envisaged should deal with the method by which the Supreme Court and the Supreme Administrative Court should appoint those members of the Constitutional Court which it was their function to elect, and with such matters as tenure of office, rules of procedure and the effect of the Court's findings. But it did not say a word about the President's right of appointment being limited by some other body.

*Politically, of course, this limitation of the President's right of appointment is appro-*

2. *The Appointment of Members of the Electoral Court.*—This Court consists of a President, assessors, and a number of professional judges. Whereas the post of President is always occupied by the President of the Supreme Administrative Court (who also appoints the professional judges from among the judges of the Administrative Court) the assessors are elected by the Chamber of Deputies, that is to say, by one Chamber of Parliament alone, although the activity of the Electoral Court extends to the Senate as well. In this there is a certain discrepancy which is less alarming in practice than in theory. As the party complexion of both Houses of Parliament was the same, and both were dominated by the same political parties, candidates for the post of assessors of the Electoral Court were in fact nominated by agreement between the leaders of the political parties. The ballot held in the Chamber of Deputies thus became a mere formality.

How did this limited participation of Parliament in the nomination of functionaries work in practice?

There is not much to be said about the Constitutional Court. Apart perhaps from one or two insignificant instances, during the whole life of the First Republic it had no opportunity of acting in its most important capacity as guardian of the Constitution. We shall have more to say of this later. We should observe, however, that the participation of Parliament in their election did not in any way affect the professional ability and efficiency of its judges. Nor did Parliament bring party political considerations to bear unduly upon their selection. In this respect Czechoslovak experience differed from that of America and Switzerland, where, in the opinion of many experts, the participation of the Legislature in the nomination of judges resulted in an over-emphasis of political and regional factors.<sup>1</sup>

With the Electoral Court the case was different. It is true that the assessors usually had first-class legal qualifications. But, being in fact nominees of political parties, they invariably regarded themselves more as their parties' delegates than as members of a non-party judicial

priate enough. The absolute non-participation of the Legislature in appointments to a Court which has to decide on the validity of its laws would certainly be unthinkable if the Executive had a say in the appointments.

<sup>1</sup> Even before he became President, Wilson was strongly opposed to the American practice known as the "courtesy of the Senate," by which appointment to federal offices in individual states of the Union was in practice left to the senators of the states concerned. See Marriott, vol. i, pp. 129-30. Bryce also called attention to this fact in his *Modern Democracies*. As to Switzerland, Prof. Rappart in his *Government of Switzerland* (p. 91) says of the elections to the Swiss Federal Tribunal: "Although their elections have come to be decidedly influenced by political and regional considerations, it has always been customary to re-elect the members of the Federal Tribunal as long as they live or care to serve."

body. Of course the Czechoslovak Electoral Court acted impartially, treating all parties absolutely on an equal footing. But in making its decisions it did tend, as we shall see later, to interpret the law in favour of political parties and to the detriment of individual members of Parliament. This was largely due to the way in which the Court's members were elected. One can easily imagine that the leaders of the parties would nominate as assessors only those who might be expected to interpret laws in a way favourable to their own party and to party discipline.

*Parliament as an Autonomous Body.*

The autonomous activity of Parliament does not greatly differ in Czechoslovakia from parliamentary practice in other democratic countries. We will therefore deal with this point quite shortly. The provisions of the Constitution<sup>1</sup> are as follows: The essential rules governing the mutual relations of the two Chambers, as well as their relations to the Cabinet and the public, are to be laid down in a statute. Within the framework of this statute, however, each Chamber is to issue its own rules of procedure, elect its own Speaker and other officers.

So far the Constitution. It is interesting to note that neither Chamber has made full use of its right to regulate its internal affairs independently. Immediately after the promulgation of the Constitution Parliament passed two statutes each enacting rules of procedure for each House of Parliament. They are almost identical, and set out the rules of procedure in the most detailed fashion. The Chambers themselves thus voluntarily surrendered a notable part of their autonomy in favour of a common arrangement by statute, so that only minor points remained for each Chamber's independent ruling.

It goes, of course, without saying that each House exercises disciplinary authority over its members. For statements made in the Chamber members are subject only to the disciplinary rules of the Chamber. Disciplinary action (which at most means exclusion from the session) is taken by the Speaker of the House concerned.

In one respect, however, the autonomy of the Czechoslovak Parliament differs from that of other parliaments. This is in the matter of verifying the M.P.s eligibility after the election. The French and American Constitutions leave this function to the Legislature itself. In Britain some of this work is done by the judiciary. The Czechoslovak Constitution adopted some sort of a middle way, and laid down that validity of the elections to both Chambers of Parliament should be examined by a special Electoral Court. We shall say more on this subject in Chapter III.

<sup>1</sup> Article 37.

### B. Procedure.

Having examined the activity of the Czechoslovak National Assembly, let us now consider briefly the main principles which determine its forms. We shall see that they are a combination of French, British and American elements, with a few features peculiar to Czechoslovakia.

*Provisions of the Constitution.*—A few rudimentary principles of procedure are directly mentioned in the Constitution itself. It lays down the minimum attendance or quorum required for each Chamber to make valid decisions, i.e. a third of all its members. For certain decisions a higher quorum is required both in respect of attendance and voting.<sup>1</sup> It prescribes that changes in the Constitution can be effective only if both Chambers concur; thus the Senate's opposition cannot be overruled by the Chamber of Deputies. It settles the principle of publicity for the sessions of both Chambers and permits secret sessions only when this is provided for by the rules of procedure.<sup>2</sup>

*Rules of Procedure.*—All the main principles of parliamentary procedure are set out in two acts, the Rules of Procedure Acts (1920), which regulate all the important questions of procedure, and leave only minor points to be dealt with by the respective Chambers. Both these acts are almost identical, and follow the lines similar to those observed in Western parliaments. We will now briefly review them.

<sup>1</sup> Thus a declaration of war and a change in the Constitution require a three-fifths majority of all the members in each of the Chambers (Article 33), while the indictment of the President of the Republic and the members of his Cabinet by the Chamber of Deputies requires the presence of two-thirds of the deputies and a two-thirds majority of votes. If a bill of the Chamber of Deputies is to become a law despite its rejection by the Senate a majority of all the members of the Chamber is required on a second submission. If a bill of the Chamber of Deputies is rejected by a three-fourths majority of all the members of the Senate, a three-fifths majority of all the members of the Chamber of Deputies is required to carry it through despite the Senate's opposition (Par. 1 of Article 44); if the Senate persists with a bill which it has discussed and which has been rejected by an absolute majority of all the members of the Chamber of Deputies, the Chamber of Deputies requires an absolute majority of all members for its final rejection (Par. 2 of Article 44); for overriding a veto of the President an absolute majority of all the members of both Chambers, or a three-fifths majority of the members of the Chamber of Deputies, is required (Article 48); for the election of the President of the Republic the presence of an absolute majority of all the members of both Chambers at the time of voting and the votes of three-fifths of those present are required (Article 57); for a vote of no confidence in the Government to be valid, the presence of an absolute majority of deputies is required (Article 75).

<sup>2</sup> A resolution that a session shall be held *in camera* is made by the appropriate Chamber on the proposal of its Speaker or a member of the Cabinet. Such a request on the part of a Cabinet minister must be obeyed if it is made in order to answer an interpellation of a confidential nature.

A subject for discussion is laid before the Chamber of Deputies or the Senate. It may be a bill, a report, or a declaration by the Government. It is first of all referred to a Select Committee of the Chamber in question, one of whose members is required to study the subject and report upon it. His report is then discussed and voted upon in Committee. The decision of the Committee is then included in the agenda of the plenary session of the respective Chamber, where it is introduced and defended by the Committee's spokesman. Members outvoted in Committee, provided they total not less than one-fifth of the Committee, have the right to prepare a special minority report for general discussion. The Committee's report is delivered through the Chancellery to the Speaker, who arranges for the report to be distributed to all the members of the House and decides when the matter shall be debated by the House.

Statutory bills or international treaties are given two readings. The first is followed by debate; the second reviews the subject as a whole. The bill or treaty is then voted upon.

In the debate the first member with the right to speak is the Committee's spokesman. He is followed by other speakers who speak in the order of their application. The first to rise is an opponent of the proposal. He is invariably a member of the minority in Committee. The speeches are then arranged so that they are alternately for and against the motion. No member may speak more than twice on the same question. Matters other than statutory bills and treaties are discussed at a single session after one reading.

Votes are cast by raising the hand or standing. A detailed count is made only when in the opinion of either the Speaker or of at least fifty members the result of the voting is doubtful. For a few important decisions of the House the Constitution provides for the ballot to be taken on roll call.

In the parliamentary control of the Government through questions by M.P.s, two kinds of interrogation are distinguished: questions by individual members, and interpellations. A simple question is put in writing through the Chancellery of the House, but is not printed. The minister concerned may answer either orally or in writing through the Chancellery. Such an enquiry becomes an interpellation if it is signed by at least twenty deputies or ten senators. The minister must answer such an interpellation, either orally or in writing, within two months of its presentation, or he must expressly decline to do so, and at the same time give his reasons. In the latter event the House may demand a debate. If the House so decides a minister is bound to reply to the interpellation.

The fact that most of the work of Parliament is done in Parliamentary Committees is one of the notable features of the Czechoslovak parliamentary system. These Committees are the real workshops of each House,

Everything is discussed in detail, experts are consulted and differences of opinion are composed or resolved into two camps, one for and one against. The final draft report of the Committee usually needs little if any alteration after general debate. There are a great number of Committees in both Houses. Committees for military matters, constitutional questions, agriculture, education and the budget. There is also an "Initiative" Committee which discusses bills resulting from the initiative of the House. There is a Committee for Parliamentary Immunity and Incompatibility. There are standing Committees set up at the beginning of the session as a permanent part of the parliamentary machinery. Others are *ad hoc*, and may be set up by either House at any time on the proposal of at least 21 deputies or 11 senators respectively. This system of parliamentary work by Committees very much resembles the procedure in the U.S. Congress and the French Chamber of Deputies.

Plenary sessions of the Chamber of Deputies and the Senate thus became assemblies for registering only such conclusions as are agreed upon in the Committee stage. The parties have already voiced their views in Committee, after full discussion in the privacy of their own party club-rooms. They had decided in advance how their members would speak in the general debate and how they would vote at its close. The result of the voting was known beforehand, so the final ballot was only a formality. No wonder, then, that plenary sessions became gatherings where swords were crossed not to convince opponents within Parliament but to put party views before the public. When speaking in the House the speakers were not addressing the half-empty benches of their colleagues so much as the journalists' and political correspondents' gallery with the idea of thus reaching the ears of the electorate. Hence Czechoslovak parliamentary debates were less lively than those of Westminster. They lacked that spontaneous but disciplined liveliness, or that particular parliamentary spirit, both of which—however critical the attitude of many British observers may be to the development of their own parliamentary institutions—seem so impressive to continental observers of British parliamentary behaviour. The Czechoslovak M.P. knew full well that his speech, however brilliant, could not change anybody's mind inside the House.

This does not mean that debates in the Czechoslovak Parliament were not lively at times, but heated scenes were less frequent than in Westminster. When they did occur they sometimes exceeded the limits of moderation. The seats and tables of the House came in for their share of abuse, and on a few occasions the swollen faces and broken noses of some violent members told their own story.

As in many other respects, there was less of that healthy middle way in Czechoslovak parliamentary practice of which the British may be proud.

The Czechoslovak Parliament oscillated more often and abruptly between dull indifference and intense excitement than the House of Commons.

### 3. CZECHOSLOVAK MEMBERS OF PARLIAMENT: THEIR RIGHTS AND OBLIGATIONS

We shall treat this question under the following headings: (a) Immunity, (b) Incompatibility, (c) Trust of conscience and party instructions, (d) The Czechoslovak Member of Parliament.

#### *Immunity.*

As in other countries, the immunity of members of the Czechoslovak National Assembly is guaranteed. M.P.s may in no way be prosecuted for their voting in Parliament or in Committee. They cannot be penalized for statements made by them in the exercise of their mandates, and they are amenable only to the disciplinary power of the Chamber itself. For other acts of commission or omission they can be arraigned only with the concurrence of the appropriate Chamber. If concurrence is withheld the charge automatically lapses. There are only two exceptions to this rule: (1) A member is not exempt from legal liability as responsible editor of a paper or other periodical. (2) He may be arrested if caught in the act of committing an offence. Such an arrest must be notified to the Speaker of the House immediately and the member must be released unless the House has signified its approval of the detention within 14 days.

So much for the prescriptions of the Constitution. In *practice* a tendency at first developed not to hand over members for prosecution at all. Later a distinction began to be made between political and non-political offences. In the first case prosecution was refused and in the second it was permitted. In considering whether the character of the offence was political or non-political, each Chamber freely came to its own *ad hoc* conclusions.

Here we should mention two points. The Constitution gives members of Parliament the right to refuse to testify on matters confided to them as members of the Chamber, even after they cease to be members. An exception to this principle is made, however, where a member of either Chamber has been seduced into abusing his mandate.

According to the Defence of the Republic Act members of the legislative bodies enjoy greater protection than ordinary citizens. An attempted murder of a member of Parliament for his political activity is punished more severely than a similar crime committed against an ordinary citizen.

#### *Incompatibility.*

*Constitutional Prescriptions.*—The Constitution itself contains very few

clauses on incompatibility. The following persons may not become members of the National Assembly.

- (1) Governors of provinces and districts<sup>1</sup>;
- (2) Members of provincial Diets<sup>2</sup>;
- (3) Members of the Constitutional Court;
- (4) Assessors of the Electoral Court.

Civil servants and other public functionaries are not barred from Parliament. If, however, a civil servant becomes a member of Parliament he is automatically granted leave for the duration of his parliamentary career, while retaining his right to his regular Civil Service salary (less his local allowances), as well as his right to automatic promotion by seniority.<sup>3</sup> On the other hand, university professors and public officers other than those employed directly in the service of the State can continue their normal work during their term of office as members of Parliament. They have, however, the right to leave their normal work if they wish. A member of the National Assembly may not be appointed to the Civil Service until one year from the time he ceases to be member.<sup>4</sup>

No person may be at the same time a member of both Chambers.<sup>5</sup> The President of the Republic may not be a member of either House, nor can his membership be exercised by a Vice-President.<sup>6</sup> Members of Parliament are forbidden to petition public authorities on behalf of individuals, unless this falls within the scope of their work or usual profession.<sup>7</sup>

This is all that the Constitution has to say about incompatibility. On the whole, it follows here the Western patterns, sometimes exceeding the latter in severity, showing more leniency elsewhere.<sup>8</sup> Inspired by the theory of the triple division of the State power, it attempted to avoid

<sup>1</sup> As described in detail in Chapter VI, the Czechoslovak Republic is divided administratively into four large provinces approximately based on the former historical divisions of the country. Although in character they correspond to British counties, they are larger in area. We might also compare them with the provinces of Canada if we ignore the federal structure of the Canadian Dominion. The provinces are further divided into districts, which are midway between the provinces and parishes. They resemble the urban and rural districts of Britain.

<sup>2</sup> See Chapter VI.

<sup>3</sup> This is an increase of pay which is automatically granted after every three years of service if it is not withheld for disciplinary reasons. An official could not however be promoted during the period he sat in Parliament, i.e. moved up to a higher rank in the Service. See Chapter VIII.

<sup>5</sup> Article 68.

<sup>6</sup> Article 63.

<sup>4</sup> Article 20.

<sup>7</sup> Article 22.

<sup>8</sup> It is less severe than the American Constitution in that nobody can be a member of Congress who exercises any other public function under the authority of the United States, but it goes beyond it in so far as a member of the Congress can become another paid State functionary immediately after ceasing to be a member of Congress.

endowing a man with two separate public functions. It was soon realized, however, that the Constitution defined the principle of incompatibility too narrowly. It allowed a wide scope for a number of activities unsuitable for a representative of the people.

*The Incompatibility Act, 1924.*—To fill in these lacunae the Constitution was supplemented by the Incompatibility Act, 1924. This Act declares it was incompatible with membership of the National Assembly:

(1) To own, or in any way participate in, a profit-making enterprise being in business relations with the State, its institutions, or funds.

(2) To offer legal or technical help in matters of business relations with the State or State funds.

(3) To abuse membership of the House by misguiding or influencing persons who have in their turn a decisive or substantial influence upon the interests of a profit-making enterprise in which the member takes part.

(4) Consciously to permit a third party to abuse the position of a member of Parliament by any means stipulated under (3).

(5) To secure direct or indirect financial advantage by reason of commercial contact with the State, its institutions, or funds.

(6) To exercise a calling or occupation, whether as principal or accessory, in such a way as to abuse the parliamentary status by obtaining reward beyond what is customary.

Moreover, no Speaker or presiding member of either House can be a member of a governing Board or the representative of a limited company or of a registered professional association if it is run for profit. This ban is also placed on members of the Cabinet.

Thus major abuses by members of Parliament of the political influence associated with their mandates were largely prevented. The country was thereby protected against flagrant exploitation of membership status by members seeking gain for themselves or others.

On the whole the Constitution and the Incompatibility Act, 1924, succeeded in banishing the worst forms of abuse. It may be their provisions went further than in many other democracies. Loopholes of course remained, and advantage was taken of them. Even after the promulgation of the Incompatibility Act, 1924, the members of the National Assembly enjoyed an almost unfettered freedom to indulge in profitable activities outside Parliament. They could be shareholders or even sit on the governing body of companies and societies which were not in business relations with the State and its institutions. They were free to follow their private profession, though most of them used to give it up for the duration of their parliamentary appointments. At the same time the fact that members of Parliament were sometimes appointed to posts in public institutions

(Social Insurance and others) often led to bad feeling. Finally, the practice of appointing M.P.s to paid posts in party headquarters had a bad effect not only on public opinion but also on the relations of the M.P. to his party and Parliament.

On the whole, however, conditions in Czechoslovakia were better than in most other democracies. Abuses of parliamentary status were few indeed. Demagogic virulence tended to exaggerate cases that arose, making a mountain out of an occasional molehill.

#### *Trust of Conscience and Party Instructions.*

The Czechoslovak Constitution lays down that members of the National Assembly must execute their mandates personally and that they may not accept instructions from anybody else. In these words the Czechoslovak Constitution, treading the path of other modern constitutions, prohibited what is known on the Continent as the "imperative mandate."

The clash of the M.P.'s freedom to act as "his unbiased opinion, his mature judgment, his enlightened conscience" bids him, with attempts to bind this freedom by instructions, is an old problem of representative government. It was such even at the time when Burke delivered the famous address to his Bristol constituents from which we have borrowed the above quotation. In his day, of course, he could not have referred to limitations imposed upon the M.P. by the political parties, whose supremacy in the present-day machinery of our mass democracy he could not have visualized. But it is still the same basic problem, the problem of freedom versus discipline, of individual conscience versus political compromise.

The development which has taken place since Burke's day may well serve as a classical example of how little resistance some legal enactments offer to the tremendous needs and pressure of actual life. The principle that the M.P. executes his mandate personally, that in such execution he need not obey anybody else, and that he must act only in such a way as his reason and conscience impel him, is, in one form or another, included in all modern constitutions, written or unwritten. In Czechoslovakia as in many other countries this undertaking forms part of the oath taken by the M.P. before he assumes office. Nevertheless, we know that M.P.s of each political party form bodies known as parliamentary clubs. We also know that such clubs subordinate individual deputies to their will, and tend to the formation of an united front, that their decisions have to be obeyed by all members of the party; and that the clubs are more often than not dominated by the party leaders who may even not be M.P.s. We have seen how M.P.s have to bow to their whips, and how they receive

instructions as to how to speak, which meetings to attend and how to vote on all major issues. We are also aware of the severe measures taken against those who disobey.

All this is familiar practice everywhere in our times. It is a natural development of modern democracy, which could not maintain itself for any length of time amidst the complexities of modern public life without the political party system. A parliamentary régime would soon find itself in a state of hopeless stagnation were it deprived of the support and assistance of party machinery. If we consider this phenomenon in Czechoslovakia it is because this devolution "from modern representative relationship to medieval mandatory relationship" (to use the actual words of a prominent Czechoslovak author) has probably been more complete there than in any other modern democracy. In this instance Czechoslovakia is a striking example of how even good things, such as party discipline, may be disfigured by overemphasis, and their proper proportions be distorted.

Czechoslovakia guaranteed a member's obedience to his political party in the following way. Each candidate for Parliament made an undertaking to his party that he would yield up his seat if asked to do so. Thus when a serious dispute arose between the member and his party—as, for instance, when a M.P. disobeyed his whips and was excluded from the party—he was asked to resign.

Now in Czechoslovakia the members of both Chambers could surrender their mandates at any time, and this without having to apply for any "stewardship of the Chiltern Hundreds." If then the M.P. refused to comply with his party's request to resign from his seat in Parliament the party appealed to the Electoral Court. This Court (which will be described in the next chapter) had among its powers that of deciding whether a member ceased to be a member of his party on account of base or dishonest conduct. If such was proven the member lost his seat. The Court considered a M.P.'s "dishonesty" to lie in the fact that he had made a promise to his party to give up his seat if asked to do so, and subsequently failed to do so.

The consequences of this interpretation are obvious: If a deputy or a senator became an embarrassment to his party by reason of his excessive independence, the party could at any time deprive him of his seat and replace him with the candidate who ranked next highest on the list at the time of the last general election. (We must remember that under P.R. as practised in Czechoslovakia there could be no bye-elections.) Thus the dogma of the absolute political independence of M.P.s was readily scrapped and strict obedience to party instructions firmly established in its place. Thus the Czechoslovak M.P.s became indeed "the sectaries of parties rather than the free representatives of the whole common-

Everything is discussed in detail, experts are consulted and differences of opinion are composed or resolved into two camps, one for and one against. The final draft report of the Committee usually needs little if any alteration after general debate. There are a great number of Committees in both Houses. Committees for military matters, constitutional questions, agriculture, education and the budget. There is also an "Initiative" Committee which discusses bills resulting from the initiative of the House. There is a Committee for Parliamentary Immunity and Incompatibility. There are standing Committees set up at the beginning of the session as a permanent part of the parliamentary machinery. Others are *ad hoc*, and may be set up by either House at any time on the proposal of at least 21 deputies or 11 senators respectively. This system of parliamentary work by Committees very much resembles the procedure in the U.S. Congress and the French Chamber of Deputies.

Plenary sessions of the Chamber of Deputies and the Senate thus became assemblies for registering only such conclusions as are agreed upon in the Committee stage. The parties have already voiced their views in Committee, after full discussion in the privacy of their own party club-rooms. They had decided in advance how their members would speak in the general debate and how they would vote at its close. The result of the voting was known beforehand, so the final ballot was only a formality. No wonder, then, that plenary sessions became gatherings where swords were crossed not to convince opponents within Parliament but to put party views before the public. When speaking in the House the speakers were not addressing the half-empty benches of their colleagues so much as the journalists' and political correspondents' gallery with the idea of thus reaching the ears of the electorate. Hence Czechoslovak parliamentary debates were less lively than those of Westminster. They lacked that spontaneous but disciplined liveliness, or that particular parliamentary spirit, both of which—however critical the attitude of many British observers may be to the development of their own parliamentary institutions—seem so impressive to continental observers of British parliamentary behaviour. The Czechoslovak M.P. knew full well that his speech, however brilliant, could not change anybody's mind inside the House.

This does not mean that debates in the Czechoslovak Parliament were not lively at times, but heated scenes were less frequent than in Westminster. When they did occur they sometimes exceeded the limits of moderation. The seats and tables of the House came in for their share of abuse, and on a few occasions the swollen faces and broken noses of some violent members told their own story.

As in many other respects, there was less of that healthy middle way in Czechoslovak parliamentary practice of which the British may be proud.

The Czechoslovak Parliament oscillated more often and abruptly between dull indifference and intense excitement than the House of Commons.

### 3. CZECHOSLOVAK MEMBERS OF PARLIAMENT: THEIR RIGHTS AND OBLIGATIONS

We shall treat this question under the following headings: (a) Immunity, (b) Incompatibility, (c) Trust of conscience and party instructions, (d) The Czechoslovak Member of Parliament.

#### *Immunity.*

As in other countries, the immunity of members of the Czechoslovak National Assembly is guaranteed. M.P.s may in no way be prosecuted for their voting in Parliament or in Committee. They cannot be penalized for statements made by them in the exercise of their mandates, and they are amenable only to the disciplinary power of the Chamber itself. For other acts of commission or omission they can be arraigned only with the concurrence of the appropriate Chamber. If concurrence is withheld the charge automatically lapses. There are only two exceptions to this rule: (1) A member is not exempt from legal liability as responsible editor of a paper or other periodical. (2) He may be arrested if caught in the act of committing an offence. Such an arrest must be notified to the Speaker of the House immediately and the member must be released unless the House has signified its approval of the detention within 14 days.

So much for the prescriptions of the Constitution. In *practice* a tendency at first developed not to hand over members for prosecution at all. Later a distinction began to be made between political and non-political offences. In the first case prosecution was refused and in the second it was permitted. In considering whether the character of the offence was political or non-political, each Chamber freely came to its own *ad hoc* conclusions.

Here we should mention two points. The Constitution gives members of Parliament the right to refuse to testify on matters confided to them as members of the Chamber, even after they cease to be members. An exception to this principle is made, however, where a member of either Chamber has been seduced into abusing his mandate.

According to the Defence of the Republic Act members of the legislative bodies enjoy greater protection than ordinary citizens. An attempted murder of a member of Parliament for his political activity is punished more severely than a similar crime committed against an ordinary citizen.

#### *Incompatibility.*

*Constitutional Prescriptions.*—The Constitution itself contains very few

clauses on incompatibility. The following persons may not become members of the National Assembly.

- (1) Governors of provinces and districts<sup>1</sup>;
- (2) Members of provincial Diets<sup>2</sup>;
- (3) Members of the Constitutional Court;
- (4) Assessors of the Electoral Court.

Civil servants and other public functionaries are not barred from Parliament. If, however, a civil servant becomes a member of Parliament he is automatically granted leave for the duration of his parliamentary career, while retaining his right to his regular Civil Service salary (less his local allowances), as well as his right to automatic promotion by seniority.<sup>3</sup> On the other hand, university professors and public officers other than those employed directly in the service of the State can continue their normal work during their term of office as members of Parliament. They have, however, the right to leave their normal work if they wish. A member of the National Assembly may not be appointed to the Civil Service until one year from the time he ceases to be member.<sup>4</sup>

No person may be at the same time a member of both Chambers.<sup>5</sup> The President of the Republic may not be a member of either House, nor can his membership be exercised by a Vice-President.<sup>6</sup> Members of Parliament are forbidden to petition public authorities on behalf of individuals, unless this falls within the scope of their work or usual profession.<sup>7</sup>

This is all that the Constitution has to say about incompatibility. On the whole, it follows here the Western patterns, sometimes exceeding the latter in severity, showing more leniency elsewhere.<sup>8</sup> Inspired by the theory of the triple division of the State power, it attempted to avoid

<sup>1</sup> As described in detail in Chapter VI, the Czechoslovak Republic is divided administratively into four large provinces approximately based on the former historical divisions of the country. Although in character they correspond to British counties, they are larger in area. We might also compare them with the provinces of Canada if we ignore the federal structure of the Canadian Dominion. The provinces are further divided into districts, which are midway between the provinces and parishes. They resemble the urban and rural districts of Britain.

<sup>2</sup> See Chapter VI.

<sup>3</sup> This is an increase of pay which is automatically granted after every three years of service if it is not withheld for disciplinary reasons. An official could not however be promoted during the period he sat in Parliament, i.e. moved up to a higher rank in the Service. See Chapter VIII.

<sup>4</sup> Article 20.

<sup>5</sup> Article 68.

<sup>6</sup> Article 63.

<sup>7</sup> Article 22.

<sup>8</sup> It is less severe than the American Constitution in that nobody can be a member of Congress who exercises any other public function under the authority of the United States, but it goes beyond it in so far as a member of the Congress can become another paid State functionary immediately after ceasing to be a member of Congress.

endowing a man with two separate public functions. It was soon realized, however, that the Constitution defined the principle of incompatibility too narrowly. It allowed a wide scope for a number of activities unsuitable for a representative of the people.

*The Incompatibility Act, 1924.*—To fill in these lacunae the Constitution was supplemented by the Incompatibility Act, 1924. This Act declares it was incompatible with membership of the National Assembly:

- (1) To own, or in any way participate in, a profit-making enterprise being in business relations with the State, its institutions, or funds.
- (2) To offer legal or technical help in matters of business relations with the State or State funds.
- (3) To abuse membership of the House by misguiding or influencing persons who have in their turn a decisive or substantial influence upon the interests of a profit-making enterprise in which the member takes part.
- (4) Consciously to permit a third party to abuse the position of a member of Parliament by any means stipulated under (3).
- (5) To secure direct or indirect financial advantage by reason of commercial contact with the State, its institutions, or funds.
- (6) To exercise a calling or occupation, whether as principal or accessory, in such a way as to abuse the parliamentary status by obtaining reward beyond what is customary.

Moreover, no Speaker or presiding member of either House can be a member of a governing Board or the representative of a limited company or of a registered professional association if it is run for profit. This ban is also placed on members of the Cabinet.

Thus major abuses by members of Parliament of the political influence associated with their mandates were largely prevented. The country was thereby protected against flagrant exploitation of membership status by members seeking gain for themselves or others.

On the whole the Constitution and the Incompatibility Act, 1924, succeeded in banishing the worst forms of abuse. It may be their provisions went further than in many other democracies. Loopholes of course remained, and advantage was taken of them. Even after the promulgation of the Incompatibility Act, 1924, the members of the National Assembly enjoyed an almost unfettered freedom to indulge in profitable activities outside Parliament. They could be shareholders or even sit on the governing body of companies and societies which were not in business relations with the State and its institutions. They were free to follow their private profession, though most of them used to give it up for the duration of their parliamentary appointments. At the same time the fact that members of Parliament were sometimes appointed to posts in public institutions

(Social Insurance and others) often led to bad feeling. Finally, the practice of appointing M.P.s to paid posts in party headquarters had a bad effect not only on public opinion but also on the relations of the M.P. to his party and Parliament.

On the whole, however, conditions in Czechoslovakia were better than in most other democracies. Abuses of parliamentary status were few indeed. Demagogic virulence tended to exaggerate cases that arose, making a mountain out of an occasional molehill.

*Trust of Conscience and Party Instructions.*

The Czechoslovak Constitution lays down that members of the National Assembly must execute their mandates personally and that they may not accept instructions from anybody else. In these words the Czechoslovak Constitution, treading the path of other modern constitutions, prohibited what is known on the Continent as the "imperative mandate."

The clash of the M.P.'s freedom to act as "his unbiased opinion, his mature judgment, his enlightened conscience" bids him, with attempts to bind this freedom by instructions, is an old problem of representative government. It was such even at the time when Burke delivered the famous address to his Bristol constituents from which we have borrowed the above quotation. In his day, of course, he could not have referred to limitations imposed upon the M.P. by the political parties, whose supremacy in the present-day machinery of our mass democracy he could not have visualized. But it is still the same basic problem, the problem of freedom versus discipline, of individual conscience versus political compromise.

The development which has taken place since Burke's day may well serve as a classical example of how little resistance some legal enactments offer to the tremendous needs and pressure of actual life. The principle that the M.P. executes his mandate personally, that in such execution he need not obey anybody else, and that he must act only in such a way as his reason and conscience impel him, is, in one form or another, included in all modern constitutions, written or unwritten. In Czechoslovakia as in many other countries this undertaking forms part of the oath taken by the M.P. before he assumes office. Nevertheless, we know that M.P.s of each political party form bodies known as parliamentary clubs. We also know that such clubs subordinate individual deputies to their will, and tend to the formation of an united front, that their decisions have to be obeyed by all members of the party; and that the clubs are more often than not dominated by the party leaders who may even not be M.P.s. We have seen how M.P.s have to bow to their whips, and how they receive

instructions as to how to speak, which meetings to attend and how to vote on all major issues. We are also aware of the severe measures taken against those who disobey.

All this is familiar practice everywhere in our times. It is a natural development of modern democracy, which could not maintain itself for any length of time amidst the complexities of modern public life without the political party system. A parliamentary régime would soon find itself in a state of hopeless stagnation were it deprived of the support and assistance of party machinery. If we consider this phenomenon in Czechoslovakia it is because this devolution "from modern representative relationship to medieval mandatory relationship" (to use the actual words of a prominent Czechoslovak author) has probably been more complete there than in any other modern democracy. In this instance Czechoslovakia is a striking example of how even good things, such as party discipline, may be disfigured by overemphasis, and their proper proportions be distorted.

Czechoslovakia guaranteed a member's obedience to his political party in the following way. Each candidate for Parliament made an undertaking to his party that he would yield up his seat if asked to do so. Thus when a serious dispute arose between the member and his party—as, for instance, when a M.P. disobeyed his whips and was excluded from the party—he was asked to resign.

Now in Czechoslovakia the members of both Chambers could surrender their mandates at any time, and this without having to apply for any "stewardship of the Chiltern Hundreds." If then the M.P. refused to comply with his party's request to resign from his seat in Parliament the party appealed to the Electoral Court. This Court (which will be described in the next chapter) had among its powers that of deciding whether a member ceased to be a member of his party on account of base or dishonest conduct. If such was proven the member lost his seat. The Court considered a M.P.'s "dishonesty" to lie in the fact that he had made a promise to his party to give up his seat if asked to do so, and subsequently failed to do so.

The consequences of this interpretation are obvious: If a deputy or a senator became an embarrassment to his party by reason of his excessive independence, the party could at any time deprive him of his seat and replace him with the candidate who ranked next highest on the list at the time of the last general election. (We must remember that under P.R. as practised in Czechoslovakia there could be no bye-elections.) Thus the dogma of the absolute political independence of M.P.s was readily scrapped and strict obedience to party instructions firmly established in its place. Thus the Czechoslovak M.P.s became indeed "the sectaries of parties rather than the free representatives of the whole common-

wealth."<sup>1</sup> In clear contradiction to the written rules of the Constitution a constitutional convention of the rigorous subservience of the individual member to his party's ruling struck its roots deeply into the yet unconsolidated Czechoslovak foundations. The results of this drastic method of maintaining party discipline will be considered in the fourth and fifth chapters, where it will be seen that its influence on the Czechoslovak system of parliamentary democracy was both good and bad.

### *The Czechoslovak Member of Parliament.*

Members of Parliament are recruited in Czechoslovakia from all social classes. Thanks to the meticulous system of proportional representation which is employed, all political tendencies, even those having a negligible number of adherents, have their members in the House, with divergent views, outlooks and sympathies. Before Munich there were representatives of no fewer than six nationalities. Since we have dealt with the rights and duties of the member of Parliament let us now attempt to outline briefly his relationship to his environment.

The most important feature to be considered is his relation to his political party. In Czechoslovakia the M.P. owes his seat to the party supporting him. This is far more the case than in Britain, America or France. The indebtedness of members to their parties is also doubtless greater than in any other country with a system of proportional representation. The great majority of Czechoslovak voters vote first and foremost for a political party and not for individuals. "The successful candidate is almost invariably returned to Parliament not because of his personality nor because of his judgment and capacity, but because of his party label,"<sup>2</sup> says Jennings describing the British practice, and his description is applicable to Czechoslovakia also. As a matter of fact, when the system of elections was first discussed, one Czechoslovak party stood out for a system of elections, wherein only parties, and not individuals, would be voted for; a general party conference would then elect the party's representatives in the Legislature. All the parties headed their lists either with the names of their staunchest supporters, or with the names of prominent outstanding personalities who had played an important part in the fight for freedom during the last world war. An independent candidate or a secessionist seldom made a successful career for himself.

Once a candidate is elected he finds himself at the mercy of his party. He is subject to a harsh party discipline. He can of course freely voice his views at a meeting of his parliamentary party club or in the privacy of his party's Committee Room, But if he is outvoted there, he has to speak,

<sup>1</sup> The quotation is taken from Sir Ernest Barker's *Reflections on Government*, p. 98.

<sup>2</sup> In his *Cabinet Government*, p. 362.

vote and act in Parliament strictly according to the line of policy decided upon in his club, however much he may disagree with it. Only a daring personality essential to the party would venture out on his own. Party discipline in England, which is regarded as severe by constitutional experts, is very mild indeed compared to that of pre-war Czechoslovakia. "The deputy comes to the House," observes an outstanding Czechoslovak publicist, characterizing the situation of the Czechoslovak M.P., "simply as a delegate of his party who is in constant fear of being excluded from it and of losing his seat. Neither on his reason nor on his conscience are those demands made which could be made. Nobody asks that he should become a developed personality or that his character should be strengthened. All that is demanded is that, either with or without conviction, he should carry out the instructions which he receives from his party."

The stronger the bond between a member and his party, the weaker his ties with his constituency. The Czechoslovak M.P. pays regular visits to his district, addresses local meetings of his party from time to time, and discusses matters with the local party chiefs. He intervenes on behalf of his constituency, its local party members and its local trades unions, and sometimes takes up the personal affairs of an elector. Not being, however, bound hand and foot to his electors he can devote himself more to his proper functions, he is better enabled to follow Burke's "one interest, that of the whole—where not local purposes, not local prejudices, ought to guide, but the general good, resulting from the general reason of the whole." Unfortunately much of his time is taken in working for his party, trade union and co-operative organizations, and attendance at countless meetings.

Czechoslovak M.P.s are amply paid, and their salaries in cost-of-living terms are much higher than in Great Britain. The bare figure (5,000 Czechoslovak crowns per month) will convey little to the foreign reader. The British reader will gain a better picture of the situation if he is told that a Czechoslovak deputy or senator receives only some 40 per cent less than a Cabinet Minister, or two-thirds of the pay of the highest civil servants in the State corresponding in rank to a Head of department in Britain. This element of financial independence is weakened by the fact that some parties obliged their M.P.s to pay a proportion of their salary into the party funds.

What are, finally, the qualities of Czechoslovak M.P.s? Did capable men get in? I think I may reply with a qualified yes. As elsewhere, of course, many nonentities, distinguished mainly by their aggressive tactics, managed to force their way to the top of the party hierarchy and thereby were more or less automatically pushed into Parliament. On the other hand, there were many outstanding individuals and striking personalities

among the members, and up to the present time the Czechoslovak Parliament has been able to attract the best of the politically minded citizens in the country. The bulk of them are a worthy and well-balanced cross-section of the population, representative of the electorate's good and bad qualities. Viewed against the background of the cultural level of the country, the people's parliamentary representation can, on the whole, be said to be satisfactory.

#### 4. THE PARTICIPATION OF THE EXECUTIVE IN LEGISLATIVE ACTIVITY

The part played by the President of the Republic and of the Cabinet in legislation has been dealt with in the first chapter. Here we shall only briefly summarize the main constitutional points at issue, supplementing the account with further material. We shall also see how the provisions of the Constitution worked in practice. I propose to treat the subject under four headings: (a) The summoning, prorogation and dissolution of Parliament; (b) Legislative initiative; (c) The signing of statutes, the veto and the legislative referendum; (d) Other contacts between Executive and Legislature.

##### *The Summoning, Prorogation and Dissolution of Parliament.*

The constitutional provisions have been dealt with in Chapter I. The Constitution provides ample safeguards against the abuse of power by the President. It expressly requires him to summon Parliament without fail, if need be, and to declare a general election after its dissolution. Moreover, Parliament can always insist upon being summoned even against the will of the President. Provided he obtains ministerial countersignature, the President may of course dissolve Parliament as often as he likes except during the last six months of his term as President. The dissolution of Parliament does not remove parliamentary control from the Executive. For at the moment of dissolution, and in general at any period during which Parliament is not sitting, its place is taken by a special Parliamentary Committee of twenty-four members which will be considered later in this chapter.

The parliamentary practice, which developed around these constitutional provisions, was very simple. The regular sessions of the Czechoslovak Parliament were so lengthy that the Parliamentary Summer Vacation was never longer than a few days. Only once, and this immediately after the first session of the newly elected National Assembly in 1920, did it happen that the Spring Session ended in July and the Autumn Session opened in October. Otherwise in practice the Czechoslovak Parliament was almost permanently in session. This does not mean, of course, that

the members had to sit throughout the year without interruption. Naturally they took their leave, but there used to be no formal parliamentary recess.

Students of democracy will of course be most interested in Czechoslovak practice with regard to parliamentary *dissolution*, a most important factor in shaping the relationship between the Executive and the Legislature. Many expert students of government find in the right of dissolution an invaluable asset of a strong democratic Executive, guaranteeing it against the caprices of the Legislature and also constituting an indispensable means for maintaining permanent contact and close harmony between Parliament and the electorate. "A parliament which has lost contact with the electorate," says Sir Ernest Barker,<sup>1</sup> "is a parliament which is virtually *functus officio*; it has dropped out of the general current of national discussion into a backwater and it must be brought back into the current by the machinery of dissolution and a new election before it can act in its proper office and perform its proper function." Others, however, condemn the power of dissolution as being a tyrannical factor limiting the free decisions of the two Houses, a "big stick" which the chief of the Executive is always inclined to brandish over the heads of legislators unwilling to bow to his requests.<sup>2</sup>

Under the 1920 Constitution the Czechoslovak Parliament was dissolved only three times altogether—in 1925, 1929 and 1935. In none of these cases was dissolution directed to ousting a parliamentary majority. In none of them was dissolution used by the Executive as an appeal to the people, to the electorate, against an unfavourable decision of the Legislature, as an attempt to obtain in a general election a more advantageous composition of the Houses. The Government never sought by dissolving Parliament to escape its criticism or to forestall a possible, or even imminent, vote of censure. On the contrary, the Government's only object in each of these three dissolutions was to ascertain through a general election the real state of public opinion, when neither Parliament nor the political parties were sure as to whether the Legislature in power truly represented the political attitude of the electorate. Dissolution was thus meant to clear the political ground, to ascertain the relative strength of the parties, and to create a basis for a new government coalition. As can be seen from this brief description, dissolution was never used as a political weapon of the Executive against a Legislature averse from it.

This method of using the power of dissolution differs markedly from that made of it in many other parliamentary democracies. An explanation can be given for this unusual practice of dissolution, a practice which might

<sup>1</sup> *Reflections on Government*, p. 46.

<sup>2</sup> Thus, for example, the late Lord Wedgwood in his *Testament to Democracy*.

almost be classed among Czechoslovak constitutional conventions. Two particular influences were here at work: the drastic party discipline and the system of government by coalition. Helped by the ruthless practice of the Electoral Court (the majority of whose members they themselves appointed) political parties had complete control over their members sitting in both Houses of Parliament. Consequently, the parties of the government coalition controlled the whole of the Legislature and through it the Government. As long therefore as the government coalition stuck together, no antagonism between the Executive and Legislature calling for parliamentary dissolution, could possibly develop. Only when the party coalition began to show signs of disintegration did dissolution loom up at a discernible distance on the political horizon. By then the leaders of the coalition knew that their time had come—and they knew it before Parliament did. They retired of their own accord and Parliament was dissolved, on its own accord also.

The threat of dissolution did not cramp the freedom of Parliament in Prague, as, in the opinion of a number of British students of government, it does in Westminster. Under the Czechoslovak electoral system the leaders of the major parties, indeed most of their members who were obedient to their party whips, had in fact their seats guaranteed ahead of the elections. Only the total disaster of their party at the polls—a highly unlikely event under proportional representation—could have cost them their seats. Further, the expenses of the electoral campaign were invariably borne by the party itself and not by individual candidates. Obviously, then, dissolution could not seem such a nightmare to Czechoslovak M.P.s as it may seem to some of their British colleagues. The main reason, of course, why dissolution could act as a scarecrow far less in Prague than at Westminster was that Czechoslovak party leaders had other more powerful weapons in reserve. Even during a parliamentary term they could purge Parliament of a member disagreeable to them without resorting to a dissolution.

The most propitious time for using the right of dissolution to enforce a general election against the will of Parliament occurred during the two short interim governments of civil servants in 1920 and 1926. For men of less profound democratic convictions there might have been a strong temptation to force a general election in an attempt to maintain themselves in power. But this idea never entered their heads. As we have observed earlier, these two interim governments knew that their only task was to allow time for a new grouping of parties and to maintain the administration while the creation of a new government coalition was in process. They never expected to remain in power even for a moment longer than was absolutely necessary for this purpose.

*Legislative Initiative.*

To what has already been said on this matter some remarks might be added on the way in which it worked. Developments in Czechoslovakia proceeded along the path trodden wherever the legislative initiative is shared by Parliament and the Executive. The Cabinet had an almost exclusive monopoly in introducing bills. In fact I believe that it monopolized legislative initiative more than elsewhere. This again was due to the rigorous party discipline and the coalition system. Parliamentary initiative outside the Cabinet was limited to the Opposition, but Opposition Bills were introduced without any hope of their being passed and they were only brought for demonstration purposes.

*The Signing of Statutes, the Legislative Veto and the Referendum.*

There are three means by which the Executive can escape legislation it does not want. Firstly, the President can refuse to sign a statute, thereby drawing the attention of the Legislature to its shortcomings. Secondly, he can veto it. These two powers are negative only. By their use the President can hinder the passage of bills unwanted by the Executive although he cannot prevent thereby their appearance on the statute book; but he is not in a position to compel Parliament to act, to pass statutes because they are *desired* by the Government. That is why a third possibility is provided for by the Constitution; the Government can resort to a referendum. It is given the power to submit to the approval of the people a bill of law which Parliament refused to pass. The relevant rules of the Constitution have already been mentioned, so that it remains for us only to consider their application in political practice.

1. *The Signing of Statutes.*—First let it be said that Czechoslovak constitutional lawyers could not agree as to whether the President's signature had or had not the significance of promulgation.<sup>1</sup> In other words, it is doubtful whether the President had the right and the obligation to consider whether the bill had passed through all the stages required by the Constitution. Practice resolved this doubt in the affirmative. The President more than once refused to sign the bill because of a technical irregularity in legislative procedure, having some doubts as to whether the text of the bill passed by the Senate was identical with the one passed by the Lower House. Apart from this, the President is not entitled to withhold his signature, even if he does not agree with the bill. He can only exercise his right of veto and return the bill to Parliament within a month, together with any observations he cares to make. Yet if Parliament by an appropriate majority stands firmly by the bill the President is obliged to sign.

<sup>1</sup> The Czechoslovak Constitution does not speak, as does for example the French Constitution, of the promulgation, but only of the signature, of a law.

2. *Veto*.—The President's *legislative veto* has of course only the power to suspend a bill. It can be overridden as we have seen, either by an absolute majority of all the members in both Chambers or by a three-fifths majority of all the members of the Chamber of Deputies, the division being held on roll call. The Czechoslovak Constitution here took a middle course between the French and the American methods. According to the French Constitution,<sup>1</sup> only a simple majority of votes is required, and the House divides as for passing a bill for the first time. American practice, on the other hand, goes much further. The presidential veto can be overruled only by a two-thirds majority of both Houses of Congress.<sup>2</sup> Consequently the American President can lay aside a bill even when it had been reaffirmed by a clear majority in Congress. The Czechoslovak system compares favourably with both of these two models. It prevents the presidential veto from being overruled by a *casual* majority in Parliament (which might in fact be only a minority of M.P.s). On the other hand, it prevents the President from forcing his will upon the majority of the Legislature.

Finally it is worth remarking that the Czechoslovak President's right of veto extends also to constitutional laws.

*The Veto in Practice*.—Altogether in the course of the twenty years of the pre-Munich Republic the President only vetoed eleven bills. This is a strikingly small number when compared, for instance, to American practice. But after what we have said about Czechoslovak Government practice, even this small number of vetoed bills seems excessive. When we consider the fact that the Cabinet and Parliament were completely dominated by the political parties, that legislative initiative was monopolized by the Executive, that no bill could be carried through Parliament against the will of the coalition parties, and that a constitutional convention developed that the bills were submitted to the President before they were presented for discussion in Parliament, there was little real scope for the veto. It is all the more surprising that in three of the eleven cases of veto the initiative came from the Cabinet! The reason for this is not far to seek. With one exception all the bills vetoed were presented during the first four years of the Republic, i.e. at a time when the machinery of government was new and inexperienced. Once it was working properly the use of the veto lapsed. The only recent case of the President's vetoing a bill was in 1928, when he did not share the view of Parliament that the 1919 ban on the sale of spirits on the eve and the day of the elections should be repealed.

<sup>1</sup> Article 7 of the Constitutional Law of 16 June, 1875.

<sup>2</sup> Article 1, Section VII.

Five of the eleven instances of veto were for juristic reasons, the President being doubtful whether the bills were entirely in order. The remaining seven cases of veto were of a political character, the President being in doubt as to whether some of their provisions were appropriate.

The President's veto was never once outvoted. In seven of the cases the National Assembly accepted the veto and altered the wording of the bill in accordance with the President's observations. In the remaining four the bill was dropped.

3. *The Referendum.*—We refer to the referendum here only for the sake of completeness. Nothing need be added to what has already been said above.

*Contacts between the Executive and the Legislature. Between the President and Parliament.*—Contact between the Head of the State and Parliament can be effected by oral and written messages sent by the President of the Republic to Parliament in the nature of "a report about the condition of the Republic recommending for its consideration measures which he regards as being necessary and useful."<sup>1</sup>

This passage is an almost literal paraphrase of the corresponding clause in the American Constitution. The authors of the Czechoslovak Constitution here departed from their French pattern, which in so many other respects they followed very closely. Though the constitutional provisions are similar on this point, the Czechoslovak practice could not have been expected to develop on American lines. The conditions in Czechoslovakia were too different to allow even an approximate parallel with the messages which are addressed to the Congress by the American Presidents.

The executive dualism which made the Cabinet, and not the President, the chief of administration, and endowed it with the right of legislative initiative, was bound to weaken the importance of presidential messages to Parliament and to enhance on the other hand the declarations which the Prime Minister or any other Cabinet Minister might have cared to make in Parliament on the Government's policy. It is therefore easy to understand that the President has never taken advantage of this provision of the Constitution, being evidently conscious of the fact that anything which he might have to say in his messages would fall short of what the public expected. Incidentally, under the Czechoslovak governmental and party system, the Head of the State seldom had an opportunity of influencing public opinion in this way. Nor could he thereby exercise pressure upon a hesitating or uncertain Legislature, as frequently happens in the United States. Only on one occasion has the Czechoslovak President been known to make a declaration to the assembled members of Parliament. This was

<sup>1</sup> Article 64, point.

in March 1930, when the late T. G. Masaryk replied to the good wishes offered him on his birthday. As the President himself pointed out, however, this was not, and could not be a message in the *constitutional* sense.

Only during the Government's exile in Great Britain have presidential messages become a practical rule of the kind probably anticipated by the authors of the Constitution. For three successive years the President of the Republic has made his annual report on Czechoslovak affairs and the general political situation for the previous and coming year at the opening session of the State Council. Twice he did this during its session.

All this, of course, does not mean that contact between President and Parliament during the Republic was insignificant. Nothing could be further from the truth. Hardly any Head of the State in modern times has maintained such close contact with the people's representatives as did the two Presidents of the Czechoslovak Republic. The contact was, however, informal and extra-constitutional, and consisted of personal talks and discussions with deputies and senators and their groups and delegations. But contact was made with them not so much as members of the legislature, but rather as leaders of political parties and party groups.

*Cabinet and Parliament.*—The Constitution makes good provision for contact between Cabinet and Parliament. Ministers have the right to participate at any time in the meeting of either Chamber or of their Committees and they have the right to speak whenever they wish to do so. They are *obliged* to attend a meeting in person if asked to do so by either House or by a parliamentary Committee. On other occasions they may be represented by an official of their department. M.P.s have the right to put questions to ministers, and to interpellate them.

Through these provisions sufficient account is taken of the needs for permanent mutual contacts between the Executive and the Legislature. They make it clear that any minister can be requested to report at any time to the Chamber or to any of its Committees on his department's activities. And Parliament can hold him to answer any interpellation, however reluctant he may be to do so. On the other hand a minister always has access to the meetings of both Houses and their Committees and thus is able to keep himself abreast of all parliamentary activity in all its stages.

The practical working of these constitutional provisions was highly satisfactory. Contact between the Executive, its individual members and departments on the one hand and the Legislature on the other, was lively and intimate, and the standard of mutual collaboration excellent. This is one of the great achievements of the Czechoslovak system of parliamentary democracy and one of those which have greatly contributed to

its success. The lion's share of the credit for the intensity and smooth working of these contacts goes, of course, to the Czechoslovak system of political party organization. Most of the negotiations were between parties or between ministers and M.P.s of the same political party. But even when direct contact through the party channels was not achieved the mutual contact of the Executive with the Legislature was maintained. This was particularly the case with those specialists who were sometimes appointed as ministers in coalition Cabinets, and could not avail themselves of the coalition parties' committees and clubs, either because they were non-party men or because their party was not at the time a member of the Government coalition. There was also at all times a good, efficient and harmonious co-operation between the parliamentary Committees and Commissions and the Civil Service.

### 5. THE PERMANENT PARLIAMENTARY COMMITTEE

This Committee is a characteristic feature of the Czechoslovak parliamentary system. It is one in which it differs from the Western democracies, though an institution of a similar type was introduced into the German, Mexican and Uruguay Constitutions. The Czechoslovak pattern also seems to have been present in the minds of the framers of the Republican Spanish Constitution of 1931 which contains a similar provision.<sup>1</sup> In providing for a Permanent Parliamentary Committee the authors of the Czechoslovak Constitution had two objects in view:

*First*, to create a reliable organ by which Parliament's control of the Executive was maintained when Parliament was not sitting. It was feared that the Government might otherwise take advantage of a temporary absence of parliamentary control, and the disastrous results of the Imperial Decrees under the old Austrian régime served as a warning. For when the Austrian Government was unable to induce Parliament to approve a bill it waited until Parliament had gone into recess, and then took advantage of the notorious Article 14 of the Austrian Constitution of 1867 (*über die Reichsverwaltung*) which gave to the Emperor the right to issue decrees with statutory validity in the absence of Parliament.

*Secondly*, unlike other democratic constitutions the Czechoslovak Constitution did not empower the Executive to make extraordinary decrees having statutory validity. As we have seen, such powers could only be conferred upon the Executive by an Act of Parliament in special circumstances. Instead, its authors thought to provide the Government with another device, more democratic in their eyes, which would prevent the

<sup>1</sup> Regarding this see, for example, p. 187 of the above-mentioned work of Posada.

Executive from being unduly hampered by the impossibility of obtaining urgent legislation during the parliamentary recess. They therefore created a Permanent Parliamentary Committee to take over provisionally some of Parliament's powers while it was in recess.

They stated what they intended to achieve with frank clarity, though they took good care to keep in the background the real reason which they no doubt had in their minds. "The leading thought is first that the Government should at all times have at its disposal a lawful organ which should enable it to pass urgent measures, which would have statutory validity, and secondly that the Government should never be without control. To this end a Committee of 24 members shall be elected from amongst their own number by both Chambers."

#### *Function and Composition.*

The function and composition of the Permanent Committee may be summed up as follows: Should Parliament be dissolved or in recess, or when its term of office was ended, a Committee of twenty-four members will provisionally take its place. Sixteen members of the Committee and the same number of substitutes shall be elected by the Chamber of Deputies, and eight with as many substitutes, shall be elected by the Senate. In each case election is for the period of one year, but as soon as Parliament reassembles, the powers of the Committee automatically lapse.

The Committee is competent in all matters falling within the legislative and administrative powers of the National Assembly *except* for:

- (a) The election of the President or the Vice-President of the Republic;
- (b) Amendments to the Constitution and alterations affecting the competence of public authorities, unless it be to widen their scope of activity;
- (c) The imposition of new taxes and other financial burdens of a permanent character; the extension of military obligations; a permanent increase of State expenses; the disposition of State property.
- (d) Consent to a declaration of war.

Further, the Committee is entrusted with the task of accepting the Government's resignation, and arranging for the provisional conduct of affairs, should the Government resign at a time when there is no President of the Republic or Vice-President in office.

Of the other provisions on the subject we will mention only those which are of importance for our present study. The Permanent Committee makes its decisions by a simple majority in the presence of an absolute majority of its members. Measures with statutory validity, however, may only be considered by the Permanent Committee on a proposal from the Cabinet; they must be passed by an absolute majority

of the Committee's members and approved by the President of the Republic. They must be signed by the President, the Prime Minister, and by at least half of the ministers. The President has the right of an *absolute* veto upon these measures. Moreover, they must be submitted without delay to the Constitutional Court, which is bound to make sure that they do not contravene the provisions of the Constitution and are within the Committee's competence. Moreover, should expenses exceed the budget, approval by an absolute majority of the Committee's members is called for. As soon as Parliament meets again all measures taken by the Permanent Committee must be submitted to it for approval. Any measures that are not approved by both Chambers within two months of the opening of the session automatically lose their validity.

As can be seen from this brief outline, the Committee's powers are well-balanced and all possible precautions have been taken to ensure that the Parliament's authority is in no sense curtailed. Carefully considered in all its bearings, it is indeed a good piece of work. The Permanent Committee is accorded sufficient authority to act as a *provisional substitute* for Parliament. It prevents the Cabinet from abusing its powers while Parliament is dissolved or in recess, but on the other hand, the Government and the President of the Republic are well protected against arbitrary action by the Permanent Committee. Parliament's rights, then, are safeguarded against the risk of anti-democratic collusion between the Executive and the 24 members of the Committee, partly by the fact that their joint action is subjected to the scrutiny of the Constitutional Court, and partly by the express stipulation that all the Committee's measures are strictly provisional. It is therefore not surprising that this interesting innovation in Czechoslovak parliamentary practice has engaged the attention of the framers of recent constitutions elsewhere, as has been the case in Republican Spain.

#### *The Permanent Committee in Practice.*

In practice, the activity of the Permanent Committee was very small, not from any fault of its own, but simply owing to the fact that the Houses were in almost permanent session.

Thus the Permanent Parliamentary Committee could in normal times get to work only on the three occasions when Parliament was dissolved. Only when Munich came, and with it the twilight of Czechoslovak democracy, did the Committee take the place of the shattered Czechoslovak Parliament for a longer period. But that obviously was no longer a situation which could have been in the contemplation of the authors of the Constitution.

## CHAPTER III

### THE CONSTITUTIONAL AND ELECTORAL JUDICATURE

THREE judicial institutions demand special mention in a study devoted to the theory and practice of Czechoslovak democracy. They are *The Supreme Administrative Court, the Constitutional Court, and the Electoral Court*. The first, which safeguards Czechoslovak citizens against the Executive, and even against its highest organs, the President of the Republic and the Cabinet, is dealt with in Chapter VII. At this point we will discuss the two latter institutions, both of which are peculiar to the Czechoslovak legal and political order, and are without analogy in the Western democracies. It is true, the Constitutional Court finds a counterpart in some other constitutions,<sup>1</sup> but the Czechoslovak Electoral Court is, I think, unique.

#### I. THE CONSTITUTIONAL COURT

We will begin with the Constitutional Court, an organ which is, both *de jure* and by its function in the constitutional structure of the State, higher than the Electoral Court, although in practice it has been of less importance.

##### *The Prescriptions of the Constitution.*<sup>2</sup>

The Constitutional Court is an exclusive forum which is called upon to determine whether the laws of the Republic and the laws of the Diet of Carpathian Ruthenia are in conflict with the Constitution or not. Moreover, as we have explained in the previous Chapter, the Court is called upon *ex officio* to examine the validity of statutory measures taken by the Permanent Parliamentary Committee. The Constitutional Court consists of seven members. Two of them are appointed by the Supreme Administrative Court and two by the Supreme Court, from among their own members. The other two members and the President of the Court are nominated by the President of the Republic. Details, "particularly in respect of the manner in which the two above-mentioned Courts send members to the Constitutional Court, the period of its functioning, its

<sup>1</sup> In the Austrian Constitution, for example. The system of special constitutional justice was introduced into the 1931 Republican Spanish Constitution (see Articles 100, 121, 123 and 124).

<sup>2</sup> Articles II and III of the law introducing the Constitution and Article 54, par. 13, of the Constitution.

procedure, and the effect of its findings," were left to be settled by ordinary legislation.

#### *The Constitutional Court Act.*

The details referred to in the Constitution were filled in by the Constitutional Court Act, 1920, in terms which can be summarized as follows:

The President of the Republic selects the three members whom he is entitled to appoint by the Constitution from lists of candidates put forward separately by the Chamber of Deputies, the Senate, and the Diet of Carpathian Ruthenia. Each list must contain three candidates. After having thus selected the three judges, he appoints one of them as President of the Court.<sup>1</sup>

Only such persons may be appointed judges of the Constitutional Court as are versed in law and are eligible for the Senate. No member of Parliament or of the Diet of Carpathian Ruthenia can, however, be appointed.

The Constitutional Court may not adjudicate upon the constitutionality of a statute unless asked to do so either by the Supreme Court, the Supreme Administrative Court, the Electoral Court, the Chamber of Deputies, the Senate, or the Diet of Carpathian Ruthenia. Moreover, the request must be made within three years of the day on which the statute in question was promulgated.

The Court can only declare a statute unconstitutional by at least five votes out of the seven. The judgment must be published in the Official Gazette within three weeks of being communicated to the Cabinet, and from that day the Legislature, the Cabinet, all Law Courts and public authorities are bound by the Court's decision.

#### *General Characteristics of the Constitutional Court.*

In France, the United States and elsewhere the judicial control of ordinary legislation is carried out by the Law Courts of ordinary jurisdiction. They deal with problems as to whether ordinary legislation is constitutional as these problems present themselves in the course of normal litigation. As an outstanding example of this kind of procedure we may quote the Supreme Court of the United States.

The Czechoslovak system is quite different, for the Constitutional Court has nothing in common with the ordinary machinery of adjudication, whether the issue is one of private or public law. It can only act if requested to do so by one of the six organs, judicial and legislative, mentioned above. Such a request might even in Czechoslovakia originate from a normal judicial proceeding. Let us make this clear by the following example: The Supreme Court, Supreme Administrative Court, or Elec-

<sup>1</sup> We have spoken of our misgivings about the validity of this provision.

toral Court may come to the conclusion that a statute on which a case is based is unconstitutional. They would undoubtedly request the Constitutional Court to declare the statute in question unconstitutional, but the judgment of the Constitutional Court would have no formal connection whatever with the case which gave rise to the request. The cause of action which induced the Court to send its request to the Constitutional Court, and the Court's finding itself if arrived at in the meantime, would remain valid even when the statute on which it was based is thereafter declared by the Constitutional Court to be unconstitutional. For the decision of the Constitutional Court was valid only *ex post facto*. One of the outstanding students of Czechoslovak constitutional law observed that in shaping its constitutional judicature the Czechoslovak Constitution gave practical expression to the idea of Charles Benoist who had proposed something similar for the French Constitution as early as 1903.<sup>1</sup>

### *The Inactivity of the Court.*

We ought now to review the practical working of the system, but there is nothing to review! Not once was the Constitutional Court asked to adjudicate upon the constitutionality of any statute. Not once were its services requested for annulling unconstitutional legislation. The only work it performed was to examine measures taken by the Permanent Parliamentary Committee, though even here none of the measures submitted for scrutiny was ever turned down during the lifetime of the Republic.<sup>2</sup>

This surely constitutes a high tribute to the Czechoslovak Legislature. The inactivity of the Constitutional Court affords eloquent proof of the scrupulous way in which both the Executive, as the framer of the bills, and Parliament as the legislative body, kept to the spirit and letter of the Constitution. They were, of course, favoured by circumstances. The Czechoslovak Constitution is a young one. Although it was modelled on existing patterns, it was more adaptable to requirements and could take account of the new political, economic and social conditions brought

<sup>1</sup> Sobota in his article in the compendium *The Czechoslovak President of the Republic* (available only in Czech).

<sup>2</sup> In May 1939, two months after the occupation of Czechoslovakia, the Constitutional Court declared invalid an enactment on expropriation made by the Permanent Parliamentary Committee of the 16 November, 1938. This resolution is the more interesting since it shows how even under German occupation after the 15th March, 1939, the Constitutional Court sought to apply the laws of the Constitution. The question of invoking a decision of the Constitutional Court as to whether the Constitution was not violated by a governmental decree reducing the salaries of the judges was discussed in the pre-Munich Republic. The matter has, however, been settled by other means.

about by the war of 1914-18 and the first two years of post-war reconstruction. It is more in line with modern conditions than the American Constitution, the main clauses of which date from 1787, or the French Constitution, dating from 1874. From a purely juristic standpoint it is very well framed and worded, though as some critics have pointed out parts of it betray a certain haste. It bears the stamp of a sane compromise between the divergent views of political parties. It is sufficiently flexible to serve as an ample basis for modern legislation and to cover its wide range. Since it is couched in clear terms and on the whole free from ambiguity, it allows little scope for controversial interpretation.

All this, however, does not mean that there is not even a single statute in Czechoslovakia the constitutionality of which is not doubtful. A few statutes do indeed seem hardly compatible with the Constitution, and Czechoslovak constitutional experts did not fail to criticize them. I am not in a position to say why the Czechoslovak Supreme Courts failed to adopt their suggestions, and why they did not submit them to the Constitutional Court. It may be they thought that the alleged unconstitutionality was questionable, and they did not want to take action when the implications were not clear. Perhaps, again, they did not consider these cases as sufficiently important for public interest to demand that action should be taken.

Other reasons must be found for the non-activity of the Czechoslovak Constitutional Court. First of all, we must take into account the fact that the Constitutional Court could act only if a proposal reached it from a small number of collegiate bodies, none of which showed the keenness of a party pressing for a decision in Court. Moreover, three of these collegiate bodies were themselves organs of legislation, and could scarcely be expected to accuse themselves of unconstitutional procedure. Neither could there be a conflict between the central Legislature, represented by both Chambers of the Prague Parliament, and a regional Legislature (represented by the Diet of Carpathian Ruthenia), since, as we have observed, the constitutional provisions for Ruthenian autonomy were not put into effect. Finally, as we have seen, three years after the passing of a statute, the Constitutional Court had no power to change or modify it.

#### *A General Evaluation of the Czechoslovak Experiment.*

In view of the inactivity of the Czechoslovak Constitutional Court it is difficult to assess the value of the experiment. This inactivity itself testifies to the fact that there was something wrong with it in spite of the reasons which we have advanced in its favour. The main defect in the Czechoslovak system of constitutional judicature was that the bodies enjoying the right to invoke its decisions were too few in number. This

very soon became noticeable to constitutional experts in Czechoslovakia, who recommended that the number of persons or bodies entitled to appeal to the Constitutional Court should be extended. Another deficiency in my view was the time-limit of three years, and the fact that the validity of the Court's findings was not retrospective. These limitations were evidently imposed in order to promote legal stability. They are, however, contradictory and incompatible with the standpoint of equity, and it is difficult to excuse them by saying that they offer political advantages in return. As a result of the first limitation, no Court in the Republic can question an unconstitutional statute if three years have elapsed since its promulgation. As to the second limitation, an unconstitutional statute might be considered valid for a definite period, and decisions based upon it will remain valid even when the statute itself is later voided as unconstitutional.

Apart from these criticisms of Czechoslovakia's own system, however, I consider it better to let statutes be tested by a special Constitutional Court than to allow the question of constitutionality to be decided by the Courts of ordinary jurisdiction.

## 2. THE ELECTORAL COURT

Czechoslovakia made a complete break with the system of the Western democracies in designing her electoral judicature. It departed from the French and American systems which leave decisions on parliamentary elections and their validity to Parliament itself,<sup>1</sup> and from the British system which refers certain electoral difficulties to the High Court of Justice. Czechoslovakia took an original line, though a certain analogy might perhaps be traced with some other Central European countries.<sup>2</sup>

### *Constitutional Prescriptions.*<sup>3</sup>

The Czechoslovak Constitution lays down that parliamentary elections are to be verified by an Electoral Court. In establishing this provision the framers of the Constitution proceeded in the spirit of the new constitutional ideology, the exponents of which did not think it right to make an elected body a final arbiter in electoral matters and thus automatically give its majority a potential weapon against the minority.

The Constitution says no more about the matter, leaving "details" to be regulated by ordinary legislation. It does not even state how the Electoral Court was to be set up, nor how its members were to be

<sup>1</sup> Cf. Article 1 of Section VI of the American Constitution and Article 10 of the French constitutional law *sur les rapports des pouvoirs publics* of 1875.

<sup>2</sup> In Germany and Prussia, for example.

<sup>3</sup> Article 19.

### *The Electoral Court Act, 1920.*

The scanty provision of the Constitution was amplified by the Electoral Court Act, which was passed in 1920, and modified in 1924. The "details" which it was supposed to regulate went, as we shall see, much farther than was suggested in the Constitution. Indeed, the original framework of the Constitution was largely transgressed.

We will first of all consider how the Court is constituted, as this will give us a clue to everything that follows. The Electoral Court is composed partly of judges previously appointed by the Executive (the Court and its plenary session is presided over by the President of the Supreme Administrative Court, and judges of this Court act as permanent reporters of the Electoral Court), and partly of assessors specially elected by the Chamber of Deputies. Through the inclusion of professional judges, on whose appointment the Legislature has no influence, an independent, strictly judicial, element is introduced into the Electoral Court. The assessors, on the other hand, being chosen by the Legislature, represent the political element of the Court.

At the first glance the basic idea of combining legal experts and a political element in a tribunal of this kind might seem reasonable. The assessors, the political element of the Court, can certainly be considered the better fitted to look after the welfare of the Legislature, and see that the Court is not used by the Executive as a weapon against Parliament. For though they are independent, professional judges may in theory be deemed more inclined to side with the Executive who after all had appointed them and to which they look for promotion, than with the Legislature. Moreover, the assessors can be expected to understand the practical needs of parliamentary procedure better than those who have spent the main part of their lives on the Bench.

In practice, however, serious deficiencies soon came to light. Each division of the Electoral Court is composed of two professional judges and three assessors elected by Parliament. In the plenary session of the Court the assessors predominate still more. As a valid decision by the Court requires a bare majority of votes, the predominance of the "political elements" in the Electoral Court is guaranteed. Since the assessors were in fact nominees of the main political parties, this meant that the Electoral

Court was, in practice, controlled by party politics. "This Electoral Court will have Parliament's blood in its veins," observed a leading member of the Social Democratic Party in a debate on the Electoral Court Bill. It is not surprising therefore that the same blood made for the same complexion: for the rule of the political parties. "Assessors," says a prominent Czech political writer, "are politically not a *tabula rasa*. They are aware of the fact that they go to the Electoral Court as representatives of parties. From this state of affairs we can only conclude that the will of the majority in the Assembly will be decisive here as well, and that the Electoral Court will not pronounce judgments calculated to weaken the political parties and diminish their power over individual deputies."

This predominance of partisan influence could have been easily nullified through a different arrangement for voting. Thus, for instance, the voting quorum of a bench of seven members composed of four assessors and three professional judges might have been fixed at five. But the political parties were all too glad to have in the Electoral Court a suitable device for enforcing strict party discipline.

The interference of partisan politics with the Electoral Court would hardly be worth mentioning were the authority of the Court really restricted to supervision of elections as laid down by the Constitution. In that case, since the co-operation of professional judges is required, the Czechoslovak practice would be an improvement on others where the matter is left to Parliament. The fault lies in the fact that the Czechoslovak Electoral Court does not merely deal with the validity of elections, but is called upon to decide in certain cases whether a member should forfeit his seat. These are:

- (a) If a member becomes ineligible after his election;
- (b) If for base or dishonest reasons he ceases to be a member of the party on whose list he was elected;
- (c) If a member is impelled by dishonest motives to perform acts declared incompatible with his parliamentary status and has either done serious harm to the interests of the State or has enriched himself thereby, or has continued to engage in such activity after having been duly warned.

These far-reaching powers are granted to the Electoral Court by ordinary legislation (in the first two cases by the Electoral Court Act; in the third by the Parliamentary Incompatibility Act). It seems doubtful whether such novel departures as (b) and even (c) could be considered mere "details" falling within the province of ordinary legislation. In any case the Electoral Court's right to deprive members of their seats is in my view a questionable one.

The Electoral Court is not the right body to decide whether a member should forfeit his seat. While it is certainly right to put parliamentary

elections under the supervision of an organ more under the influence of the Legislature than of the Executive, decisions on the forfeiture of seats are not in this category. The Czechoslovak system gives the parliamentary majority a powerful weapon which it could use against the Opposition, or even more so against individual members. It is an imperative postulate of true democracy that decisions about the forfeiture of a parliamentary seat should be made by a Court which is non-political in character, or that at least, as we have just said, one non-political vote should be required to make the Court's decision valid. Even if such a Court were composed of professional judges *alone* the Legislature would not run any risk—provided, of course, that the Court could act only upon a proposal from Parliament.

The defect is less glaring in (a), subsequent non-eligibility, for in cases of this sort the circumstances are readily and objectively ascertainable. It is, however, very striking in (b) and (c) (expulsion from the party for base or dishonest motives and for dishonest incompatibility), since decisions have to be based on a purely subjective opinion, which is inevitably swayed by partisan influences.

What is the consequence? We have come across it in the previous chapter. Though every member had to take the oath that he would execute his mandate according to *his own knowledge and conscience*, his power to do so was undermined by his pledge to resign his seat if asked to do so by the party. Each member, elected on a party list, had thus to sign a blank cheque of blind obedience to his party, liable to be filled in any time. If he dishonoured it, the Electoral Court, acting in fact on his party's instructions, could turn him out of his seat!

It should be said in all fairness that the Czechoslovak legislators did not originally have *this* in mind. The original clause of the Electoral Court Bill was far more moderate. It provided that a member could be deprived of his seat only if, after he had ceased to be a member of his party, his retaining the parliamentary seat would be contrary to "political ethics." The fact that even this milder clause was rejected because it was seen to allow too much freedom of interpretation, testifies that the bulk of the legislators could not have meant *at that time* to go to such drastic lengths in enforcing party discipline.

A prominent M.P. thus interpreted the attitude of the Assembly at the time: "This conception of political ethics is so broad that I should not like to see it on the statute. . . . In my own view it is necessary to protect against arbitrary action that deputy who is inspired by the most exalted motives. . . . It might happen that honourable people who had the courage to adhere to their principles would be thrown out of the National Assembly. . . ." The M.P. in question then proposed that only

that deputy should be deprived of his mandate who had left his party for base and dishonourable motives. The proposal was adopted.

Yet in the course of later years the drastic system referred to above, though certainly contrary to the written rule of the Constitution and to the intentions of the original legislators, developed into a firm constitutional convention which successfully withstood all attacks, and despite its obvious ethical weakness imprinted itself indelibly upon Czechoslovak political life as one of its most typical characteristics.

The whole business was a sort of vicious circle. The political parties gained control of Parliament, and through it dominated the Electoral Court. The Electoral Court, in its turn, helped the parties to hold in check individual deputies and senators, and thus to dominate Parliament. Nevertheless we must be fair to those who considered rigid party discipline essential for the proper functioning of the Czechoslovak system of parliamentary democracy and who saw in the party pledges taken by members, as well as the functioning of the Electoral Court, an effective, if somewhat drastic, method of achieving good ends. For it is evident that in view of the large number of Czechoslovak political parties the stability and efficiency of the Executive depended upon the discipline of the Government coalition, and the more firmly the leaders of a party had their M.P.s in hand, the more easily could this stability be maintained.

## CHAPTER IV

### THE POLITICAL PARTY SYSTEM

If we think of modern democracy as a massive skyscraper, the Constitution is the blue print on which it is based. The masonry is added and a building takes shape by constitutional *practice*. But the steel girders supporting the many floors, and the roof which protects the building from rain and bad weather and thus makes it habitable at all times are provided by the political parties. Without their existence, without their active participation in the direction of the State, it is impossible, as all constitutional experts agree to-day, to imagine such a thing as a genuine modern democracy. As early as the eighteenth century Burke was to say that "party divisions, whether on the whole operating for good or evil are things inseparable from free government." And Bagehot's saying that "party government is the vital principle of representative government" is more true in our times than ever before.

In earlier times, when politics were the domain of a few privileged classes and ordinary people at best were only their subject matter, it might have been possible to dispense with clear cut political parties. Under the simpler conditions of those days public opinion, for whose useful organization the political parties are indispensable to-day, could easily enough have been ascertained and organized without the intermediary of modern party machinery. The only opinion that mattered in those times was that of a small ruling class, and a small stratum of the political aristocracy. In those days a Halifax could "put in a caveat against men tied to a party" without perhaps doing much harm. For a small house, representing the State administration of those times as compared with the skyscraper of to-day, its structure was such that it might have been held up by wooden half-timbers. If we had nothing else to fall back upon to-day but half-timbers our modern skyscrapers would not last for long.

There are no buildings in Czechoslovakia to compare with those marvels of engineering, the skyscrapers of America. Yet the structure of the Czechoslovak State machinery is in itself a skyscraper of no mean size. The same weight and responsibility as in other countries rests on the stout girders of the political parties there.

However short-lived the tradition of the Czechoslovak political parties may be when compared to those of Britain or the United States, a fair description and analysis of the Czechoslovak party system is yet a somewhat complicated business. The party scheme in Czechoslovakia is one of the most complicated on the Continent. About 20 electoral parties

were usually represented at the polls; and some of these were associations of two or more separate parties. They represent every possible shade of opinion; indeed it is difficult to discover any clear line of demarcation between some of them. Some parties have analogies in other countries; others are peculiar to Czechoslovakia. Hence we shall not try to describe the Czechoslovak party structure in detail. All we shall do is to study its main outlines, concentrating on those political parties which really mattered in Czechoslovak political life. We will also give less attention to their written programmes, which are mostly rather vague and seldom fully upheld in everyday political practice, than to their aims and the practical attitude which they adopted to the fundamental issues of the State.

#### I. THE RISE OF THE POLITICAL PARTY SYSTEM IN BOHEMIA AND MORAVIA UNDER AUSTRIA-HUNGARY

Before describing the chief modern political parties of the Republic we should pause to consider their origins. They date back to the second half of the last century. At that time Bohemia and Moravia were still part of Austria-Hungary. Consequently the conditions under which the Czechoslovak party system originated were very different from those under which the system had to work when the country recovered its freedom. This important fact must be steadily borne in mind.

The first party to take shape in the Czech territories of the Austrian Empire was that of the so-called *Old Czechs*, from which a group of radicals later seceded to form the *Young Czech Party*. These two parties dominated the Czech political horizon for several decades. At first the Old Czechs were dominant, but the Young Czechs took the lead from 1891 onwards. But it was only in the last decade of the nineteenth century and during the first ten years of the present century that political parties in the modern sense began to take shape. Both the above-mentioned parties may be considered as branches of one single party. What divided them, apart from a more pronounced conservatism in the first and a tendency towards liberalism in the second, was mainly a certain distinction in their views on the tactics to be followed in matters relating to Czech State rights. By the end of the nineteenth century, however, certain new tendencies had already begun to find expression. Socialism appeared on the scene and a Social Democratic Party made rapid progress after the introduction of universal suffrage, gaining prestige among the workers. An *Agrarian Party* next appeared to champion the cause of the peasants and farmers. Catholicism made itself felt as a political force, and provided the impetus for a number of small parties of a popular Catholic and Christian Socialist character. A number of minor progressive parties of a

bourgeois-intellectual character attempted to compete with the others in urban districts. A National Socialist Party (having nothing in common with the later German N.S.D.A.P.) came into being, which attempted to combine the elements of social progress and national consciousness. Finally a special *Retailers' Party* sought to defend the interests of smaller businessmen and retailers.

Thus a rich political heritage from Austria accrued to the new Republic. It was far too rich, and Czechoslovakia, now independent, carried these fissiparous tendencies still further. This is not surprising, for when freedom comes as suddenly as it did in 1918, after three hundred years of foreign rule, its natural tendency is to exaggerate, to over-emphasize. It is a river which has broken out of the dams containing it and derives a rich satisfaction from its disruptive power until it has quietened down in a new bed. Yet, as we shall see, the tendency became a menace to struggling Czechoslovak democracy.

## 2. THE CHIEF POLITICAL PARTIES AND THEIR CHARACTERISTICS AFTER 1918<sup>1</sup>

It will simplify this survey if we divide the main political parties into two groups according to nationality and policy. First come the parties

<sup>1</sup> Party representation in the Chamber of Deputies is here classified according to nationality and relative strength at the last elections:

Czechoslovak parties.	April, 1920	Nov., 1925	Oct., 1929	May, 1935	
				46	45
Agrarian	40	46	46		
Social Democratic	74	29	39	38	
Communist	—	41	30	30	
Progressive Socialist	3	—	—	—	
Czech Socialist	24	28	32	28	
Czech Catholic	21	31	25	22	
Slovak Catholic	12	23	19	22	
National Democratic	19	13	15	17	
National Union	—	—	3	—	
Trades and Crafts	6	13	12	17	
Fascist	—	—	—	6	
German parties.					
Sudeten German (Henlein)	—	—	—	44	
Social Democratic	31	17	21	11	
Christian Socialist	9	13	14	6	
Agrarian	13	24	16	5	
Nationalist	12	10	7	—	
National Socialist (Nazi)	5	7	8	—	
Democratic	2	—	—	—	
Retailers	—	—	3	—	

representing the Czechs, Slovaks and Carpathian Ruthenians; then the German parties in Czechoslovakia, and finally the Hungarian parties, though the last played little part in Czechoslovak public life. We shall try to proceed from Right to Left, though we must realize that it will not always be possible to classify the parties quite so definitely.

*Parties representing the Czechs, Slovaks and Carpathian Ruthenians.*

*The National Democratic Party.*—The National Democratic Party was the one large party of the Extreme Right. Though this party was not extremist from every point of view it established itself definitely as a right wing party owing to its attitude to the issue of nationalism versus internationalism. The National Democrats were radical nationalists. They were bitterly opposed to any co-operation with the Germans in pre-Munich Czechoslovakia. On no account did they want German representatives in the Cabinet. Their leader, Dr. Kramář, once summarized his Party's attitude in the following words: "Should the Germans join the Government we shall start a revolution." They paid homage to nationalist Panslavism while adopting an uncompromisingly hostile attitude towards Soviet Russia. An extreme right-wing party in these matters, it came second only to the insignificant Fascist Party.

In economic and social questions the party was rather more progressive than similarly-styled parties elsewhere. In 1919 the National Democrats even went so far as to introduce a bill for the expropriation and nationalization of forests and mines. In other respects their attitude to economic questions came nearer to orthodox old-fashioned economic liberalism than that of any other Czechoslovak party. Their supporters were mainly big businessmen, bankers and industrial *entrepreneurs*, urban property owners, the high bureaucracy, members of the liberal professions and bourgeois intellectuals.

The National Democratic Party was most successful in the first one and a half years of the Republic. It owed its initial prestige largely to the attitude of its leaders in the Czechoslovak struggle for freedom during the First World War. Both its leaders, Dr. Kramář and Dr. Rašín, were sentenced to death by the Austrians for high treason, though the sentences

	April, 1920	Nov., 1925	Oct., 1929	May, 1935
<i>Hungarian parties.</i>				
National	..	..	4	9
Christian Socialist	..	5	5	—
Hungarian-German Social Demo- crats	..	4	—	—
Independents	..	—	1	—

were later committed to a term of imprisonment. Dr. Kramář also became the first Prime Minister of the liberated State. In those days they had among their members some of the best brains of the nation. The first general election of 1920 reduced the party to the fifth place. In the first Parliament it held 46 seats; after the 1920 election they could just manage to secure 19 seats in the Chamber of Deputies, although the total number of the seats had been increased. From then onwards the National Democratic Party suffered from continual political disintegration, although on several occasions it helped to form government coalitions. For reasons which were more personal than material, it fell into bitter opposition with both Czechoslovak Presidents. Many outstanding personalities left the party; and finally it fused with a number of other nationalist factions to form the so-called National Union Party. In the last parliamentary election of 1935 it polled in alliance with two small national Carpathian Ruthenian parties a total of 456,000 votes, i.e. 5½ per cent of the whole, and was represented by 17 Deputies. By that time also its political ethics had descended to a very low level, and they never recovered.

*The Slovak Autonomous Catholic Party.*—This was an exclusively regional party confined to Slovakia. It had come into existence after the First World War. The party was exclusively Catholic, and the Roman Church entirely dominated its policy. In the field of education it waged a consistent battle against the secularization of the schools, demanding religious schools supported by the State. In economic and social questions it did not develop any particular ideology. Being, however, predominantly a party for the "small citizen" and particularly the country people, its policy was in practice a modified form of Christian Socialism, though with very many reactionary elements.

Its predominating theme was, however, its "autonomism." Soon after the creation of the Czechoslovak Republic this party put forward various autonomistic demands which were gradually increased as time went on.

Owing to the complete lack of a Slovak intelligentsia—a situation for which the old Hungarian régime was responsible—it was necessary to send Czechs to fill numbers of official and teaching posts in Slovakia. There was also a shortage of qualified people for central administration among the Slovaks. The party began an open campaign against Czech "infiltration," saying that all posts in Slovakia should fall to Slovaks, and claiming that the Czechs were not giving the Slovaks a sufficient number of posts in the central administration. The party emphatically claimed, moreover, that the Slovaks were not a branch of the Czechoslovak nation, but an entirely independent people. They began to reproach the

Czech civil servants and teachers sent to Slovakia with the fact that although they had been active in Slovakia for a number of years they had not bothered to learn Slovak. Here it should perhaps be mentioned that the differences in the Czech and Slovak languages are mainly minor ones of idiom and spelling. Finally the Slovak Catholic Party demanded a separate Slovak Parliament and a wide degree of independence in administration, legislation and in the judiciary. Their policy proved fatal for the Republic in the critical years of 1938 and 1939. The autonomistic demands of the Slovak Catholic Party became one of the weapons with which Hitler attacked Czechoslovakia. With the help of a number of Slovak quislings who turned from autonomism to separatism he created in March 1939 a so-called independent Slovakia.

At the last general election the Slovak Catholics, together with three other smaller parties, polled 564,000 votes, i.e. nearly 7 per cent of the whole, and had 22 seats in the Lower House.

*The Czech Catholic Party.*—This party came into existence in its present form after the First World War, and arose out of the fusion of a few smaller Catholic Parties. Somewhat more liberal in cultural matters than the Slovak Catholics, they were inspired by the same Christian and Roman Catholic ideals. In their attitude to social and economic questions both these parties were very much alike, though the policy of the Czech Catholic Party came closer to Christian Socialism or, as they used to describe it, "Christian Solidarism," than the Slovaks.

In the fundamental issue of political organization their policies differed widely. Though ardently supporting local and especially provincial self-administration, the Czech Catholic Party stood for a united Czechoslovak State. Here, of course, they did not see eye to eye with the Slovak Catholics, and the more the latter drifted toward an exaggerated "autonomism" the cooler grew the mutual relations between the two. The crisis of 1938 and 1939 found them in opposite camps. The Czech Catholics remained staunch upholders of Czechoslovak ideals to the bitter end, and their tested leader has been the Prime Minister of the Czechoslovak Government while exiled in London since its establishment in 1940.

In the last parliamentary election the Party polled 615,000 votes, i.e. 7½ per cent of the total, and returned 22 members to the Chamber of Deputies.

*The Agrarian Party.*—This was a continuation of the Agrarian Party founded under Austria-Hungary. It continued to function as the Agriculturalists' Party in the Republic. Its official title was the Republican Party

of Farmers and Peasants. This, and the Retailers' Party, which we shall discuss shortly, was the most class-conscious of all Czechoslovak parties, more class-conscious than the Socialists themselves. The Agrarians represented the people that worked and lived on the soil. It succeeded in gathering under its banner the bulk of Czechoslovak peasants, whatever the size of their land property. Rich owners of the maximum acreage of land allowed under the Republic met there with poor devils of small-holders who had to supplement the insufficient income wrung by hard labour in their rocky fields by part-time toiling on other people's estates or by performing some domestic craft as well as their farming. For its principal support, however, it looked to the medium and small farmers.

The composition of the party determined its whole character. It may be said to have been conservative. It adhered stubbornly to the principle of the private ownership of the land.

The party had a great deal to do with the big Czechoslovak agrarian reform after the First World War. It opposed the Social Democratic Party's attempts at the socialization of the big estates, and had preferred they should be split up among small holders. It strove to maintain the price of agricultural produce by protective tariffs (this was one of the main causes of the breakdown of the coalition in 1925), and later introduced a State grain monopoly with a view to maintaining the price of cereals and guaranteeing a steady grain market for Czechoslovak farmers.

The Agrarian Party was a peasants' party, taking good care of their supporters' material well-being. Practical considerations prevailed over ideology, and the Czech Agricultural Party was able to make common cause with the German Agrarians. The purely bourgeois Svehla Cabinet admitted representatives of the German parties into the Cabinet for the first time in the life of the Republic.

The Agrarians were almost the sole representatives of the agricultural population. Apart from them, only the Czech and Slovak Catholic Parties—and particularly the Slovak Catholics—had any hold worth mentioning on the farming electorate. Hence the party was the most stable political party in the State, with very little fluctuation in its strength. The number of its votes consistently totalled a million, i.e. some 14 to 15 per cent of the electorate. At no time did the party hold fewer than 40 seats, while they once held as many as 46. After the secession of the Communists from the Social Democratic Party the Agrarians became the most powerful party in the State. Standing politically nearer the Centre than any other major party, they automatically became the nucleus of all government coalitions. During the whole life of the Republic they were never in opposition, and one or another of the party's members has held the office of Prime Minister since 1922.

Unfortunately in the last years of the Pre-Munich Republic some of the leaders of the party displayed a rather ambiguous attitude towards the Germans. In the last parliamentary elections the Agrarians polled 1,176,000 votes, i.e. more than 14 per cent of the total, and held 45 seats in the Chamber of Deputies.

*The Retailers' Party.*—This party emerged before the first World War. Its main political successes came, however, in the Republic. It represented the independent retailers and craftsmen, rather as the Agrarian Party represented the farmers. It was a class party pure and simple, and provided perhaps the most typical proof of whether the overstressing of the class and professional principle can lead in the formation of parties. It polled 448,000 votes in the parliamentary elections of 1935, i.e., 5½% of the total, and had 17 seats.

The Retailers' Party completes our survey of the main parties of the Right, and we now turn to the Left.

*The Czechoslovak Socialists*—Though this party's full title is the Czechoslovak National Socialists, they have, of course, absolutely nothing in common with the National Socialist Party of Germany. It is a party of democratic socialism, differing from the Social Democrats by being expressly non-Marxist and rather more nationalist.

The party came into being at the end of the nineteenth century in reaction to the Social Democrats, who at that time refused to join the other Czech parties in their fight against Vienna for Czech State rights. It attempted to reconcile the national ideal with the ideas of socialism, and soon became the sworn enemy of Marxist Social Democracy. After the liberation of Czechoslovakia its nationalist mood gave place definitely to socialism. After the secession of the Communists from the Social Democrats strengthened the non-Marxist elements remaining there, the two Socialist parties of Czechoslovakia—the Czechoslovak Socialists and the Social Democrats—grew very much akin in their programmes and ideologies. The Czechoslovak Socialists at one time even wished to join the Second International though their application was rejected. Some difference remained in the social structure of the two parties. The Social Democrats had in their ranks more of the real working proletariat, while the Socialists were backed more by intellectuals, civil servants and black-coated workers.

In the last parliamentary election the party polled 756,000 votes, i.e. 7½ per cent of the whole, and had 28 seats in the House.

*The Czechoslovak Social Democratic Party.*—This is the oldest Czechoslovak party, for it was formed even before the Agrarian Party. It was a member of the Second International, and was analogous to the Social

Democratic parties of other European countries, with an essentially similar ideology of an international socialism with a Marxian flavour. Next to the Agrarian Party it was the largest and most important Czechoslovak party. In view of its affinity with the Social Democratic Parties in the rest of Europe there is no need to dwell further on its characteristics. But it is worth mentioning that the Czechoslovak Social Democrats were less *doctrinaire* than their counterparts in Austria and Germany. In this respect they resembled in many ways the British Labour Party, and like the latter they were powerfully supported by the Trades Unions.

Until the Communists seceded the Social Democrats were by far the most powerful Czechoslovak party, and in the parliamentary election in 1920 obtained 74 out of a total of the 281 seats contested at that time. No party has ever beaten this record. A Social Democrat was Prime Minister in two successive Governments which followed Kramář's revolutionary Government. The Social Democratic ministers sat in most Czechoslovak Cabinets—with the exception of the years from 1925 to 1929 when the party was in opposition. Their participation, side by side with non-socialists in the Government, distinguished them from the Socialist parties in some other European countries, where the Social Democrats persistently refused to join other parties in coalition governments. Their methods were more "Fabian" than Marxist, and they preferred wise compromise to fruitless opposition. After a short decline following the secession of the Communists, the party steadily gained in popularity and in the last parliamentary election it polled as many as 1,034,000 votes, i.e. 12½ per cent of the whole, and had 38 deputies.

*The Communist Party.*—This was an international party, including all the nationalities in the Czechoslovak Republic. Nevertheless, we deal with it here, since the great majority of its members were Czechs, Slovaks and Carpathian Ruthenians. It arose out of the extreme Left Wing elements who had seceded from the Czechoslovak Social Democrats in 1921. It pursued the same policy as the Communist parties in other countries. It was a member of the Communist International. It sharply attacked other socialist parties for their alleged reformism, and it stood for revolution and the dictatorship of the proletariat. However, it abandoned this doctrine earlier than did the Communist parties in other countries, as it soon appreciated the Fascist danger threatening Czechoslovakia from Germany; thereafter it supported democracy and to some extent the other socialist parties, though it remained consistently opposed to active collaboration as a member of the Government. Its greatest triumphs were achieved in the first parliamentary election after the secession (in 1925), when it polled 943,000 votes. This number fell four years later by some 200,000. In the last parliamentary election in 1935 it enjoyed a new rise, polling 849,000 votes, i.e. 10 per cent of the whole, and gained a total of 30 seats in the House.

*The German Parties.*

The mood of the German parties in Czechoslovakia changed radically after January 1933 when Hitler rose to power. Hence, in their development we must distinguish two phases. Prior to 1933 the German party system in Czechoslovakia evolved with a few exceptions along democratic lines as did their Czech and Slovak counterparts. As soon as Hitler's dictatorship was established in Germany, the Fascist poison penetrated in fatal doses to the German-speaking frontier districts of Czechoslovakia, and democracy there was at an end.

In the *first* phase the German political constellation in Czechoslovakia was roughly as follows:

*The German National Socialist Party.*—This was an imitation and indeed a branch of Hitler's Nazi Party. The party tried to conceal its pan-German motives, racial doctrines and anti-Semitism. Irredentist aims became only too obvious after 1933, when its activities were banned. The entire party was dissolved later. The German National Socialist Party was never an important political factor among Czechoslovak Germans, and held only 8 seats out of 300.

*The German National Party.*—This was the party of radical German nationalism, which was just as antagonistic towards Czechoslovakia as was the National Socialist Party, but rather more bourgeois in its outlook. In 1933 the party was banned for its irredentist activity. The number of seats held by the party varied from 7 to 12.

*The Christian Socialist Party.*—This was the German counterpart of the Czechoslovak Catholic Party. At first it was in sharp opposition to the State, but in 1926 it joined the Government and from that time assumed a friendly attitude towards the Republic. In the last general election it polled 162,000 votes (i.e. 2 per cent of the total) and secured 6 seats.

*The Agrarian Party.*—This was a German equivalent of the Czechoslovak Agrarian Party, and was the first of the German parties to abandon its negative attitude towards the Czechoslovak Republic and adopt a co-operative policy. It entered the Government in 1926, and in the last parliamentary election obtained 142,000 votes (i.e. 1 $\frac{1}{4}$  per cent of the whole), securing 5 seats.

*The Social Democratic Party.*—In its initial phase this party was the most powerful German party in Czechoslovakia. Ideologically it corresponded to its sister Czech party with the fundamental difference that in the early years of the Republic it was opposed to Czechoslovak unity, taking its stand uncompromisingly on the ground, first of self-determination, and then of absolute German territorial autonomy. After having given up its attempt, undertaken in common with other German parties, to separate

the German districts of Czechoslovakia and to attach them to Austria—it still demanded that the Czechoslovak army should be disbanded and all Czechoslovak alliances annulled. Like the German Agrarians and Christian Socialists, the German Social Democrats later collaborated with the Czechs and Slovaks, and in 1929 they had their first representatives in the Czechoslovak Government. The party's evolution before 1933 was similar to that of the Czechoslovak Social Democrats.

After 1933 the German political scene was dominated by *Henlein's Sudeten German Party*. Its real aim was, as Henlein himself subsequently admitted, to serve as a secret bastion of Hitler's National Socialism inside Czechoslovakia after the original German National Socialists had been disbanded. Under the guise of legality the party strove to rally all Germans in Czechoslovakia under the Swastika, to create confusion in Czechoslovak affairs, and at a given moment to cause revolt in the German districts and secure their separation and incorporation in the Reich. At the general election of 1935 this party polled 1,250,000 votes, i.e. more than all the other German parties together. It had 44 seats in Parliament, and at the municipal elections of 1938—a few months before Munich—it secured 90 per cent of all German votes, its sole German opponents being the Social Democrats and the Communists.

#### *The Hungarian Parties.*

Only two Hungarian parties ever secured seats in Parliament. These were the National Party and the Christian Socialist Party. Their aims and ideologies are sufficiently indicated by their titles. In the last parliamentary election they secured altogether 293,000 votes, i.e. 3½ per cent of the total and held 9 seats.

#### *The Czechoslovak Political Parties after Munich.*

This concludes our survey of the chief political parties during the life of the First Czechoslovak Republic. After Munich, Czechoslovakia, encircled, mutilated and mortally wounded, was unable to afford the luxury of the large number of parties existing under the First Republic. In Bohemia and Moravia all parties were dissolved and two were formed to take their place. They were the National Union Party, which was the party of the Right, and the Labour Party, which represented the Left. The first was created by the members of all the former parties of the Right and some elements of the former Czechoslovak Socialist Party; the Labour Party was formed out of the former Social Democrats, a smaller number of Czechoslovak Socialists and a part of the Communists. The Czechs thus adopted a two-party system—for the first time since the nineteenth century. The new system was based upon sound lines of division, i.e. it represented the balance between two opposing forces: conservatism and

progress. The National Union Party constituted a conservative party in a political, economic, social, cultural and religious sense. The Labour Party was in all these respects a representative of the tendencies of the progressive Left.

Unfortunately this radical simplification of the party system was so abnormal that it must be judged with reserve. Under terrible pressure from the neighbouring German dictatorship, the whole balance of Czechoslovak democracy was disturbed. Yet even after Munich the Czechs avoided one-party totalitarianism, and had a Government and an Opposition—surely a great democratic achievement during such a time of stress.

In Slovakia, however, the Hlinka autonomist party, led by a clique of political adventurers, soon gained the complete upper hand and banned all the other parties.

### 3. THE CHARACTERISTIC FEATURES OF THE CZECHOSLOVAK POLITICAL PARTY SYSTEM

#### *Party Domination of Czechoslovak Public Life.*

Pre-Munich Czechoslovakia was a state of political parties. They dominated Parliament, the central Executive, local government, various public institutions and endowments, the trades unions, and the co-operative movement. The Civil Service itself fell under their all-embracing control. From the central Parliament down to the smallest parish council, everywhere in varying degrees, the influence and activity of political parties found expression both in good and bad ways.

The whole of public life was penetrated both horizontally and vertically by the atmosphere of partisan politics. This influence culminated, of course, in the constitutional system and in constitutional practice. Even though the supreme object of a political party anywhere is to secure political power in the State, it is more particularly in a State of a centralized type such as Czechoslovakia that all the main resources of the party are concentrated upon gaining above all dominating positions in the central Parliament and the central Government, which are by far the most important seats of political power and influence.

Though political parties were the real backbone of the Constitution, perhaps more so than in any other democracy, the Czechoslovak Constitution itself makes no mention of them apart from a brief and unimportant reference.<sup>1</sup> It seems that the Czechoslovak revolutionary National Assembly did not foresee the astonishing subsequent growth of the party system. However, in the subsidiary statutes, which were passed

<sup>1</sup> This stipulation permits the association of parties for election to the Permanent Parliamentary Committee and permits the election of the Committee from the plenary session if all the parties agree.

shortly afterwards amplifying the Constitution, political parties come in for a somewhat fuller treatment.

The Czechoslovak party system possesses a number of characteristic features, which we shall now summarize. They are in some ways distinct from the party political systems known in the west, and without the knowledge of these characteristic features, it would be difficult to gain a proper understanding of the Czechoslovak system of parliamentary democracy and to judge correctly the results which it has achieved.

#### *The Plurality of Political Parties.*

The first fact that strikes the foreigner is the large number of parties represented at the general elections and the still larger number represented at the municipal and local government elections. Some of these parties were in fact associations of several political parties grouped into one for the election—in the hope of securing through this combination a better electoral result.

Now none of these parties ever enjoyed a dominating majority. Only at the first general election in 1920 did one party (the Czechoslovak Social Democrats) outbid all the others by securing a quarter of the available seats in Parliament. Since then no party has scored such an outstanding victory, and 15 per cent of the total poll is the record.

Some of the causes of this multiplicity of political parties which laid such an additional burden on Czechoslovak democracy have been given when we touched upon the question in the preceding chapter. Here we must sum up the problem and state our conclusions.

First, there is the influence of *ethnic heterogeneity*. In a state in which five different nationalities are living together, and not all of them in due harmony, a large number of political parties is almost unavoidable. Ethnic divisions are invariably a strong stimulus to political disintegration. Then there are *psychological factors* to be considered. The Czechoslovaks, as we have stated earlier in this study, are more impulsive and doctrinaire than the British and the Scandinavians, though less so than the Latins. Moreover, they are innovators. They want to be thought progressive, they want reform, change and innovation. Many Czechs would almost be offended at being called conservative. This mentality tends naturally to manifest itself in periodic outbreaks of dissatisfaction with the old parties, and an urge to create new ones. We have seen how proportional representation worked in Czechoslovakia, offering ideal conditions for the growth of new parties and sheltering small parties against the big. Personal differences between political leaders also had much to do with party fissure. As we shall show later, the personal element of individual leadership played no inconsiderable part in the party political grouping of the new State.

Lack of political tradition was also noticeable here, and contributed in no small degree to the unhealthy hypertrophy of the Czechoslovak political party system. Under Austria-Hungary the defects connected with party multiplicity, which was much less than was the case later in the history of the Republic, were not so marked as they were afterwards. In Austria the Czech parties were not faced with the task of forming a Government, while opposition to the Austro-Hungarian Monarchy could be carried out almost equally well by one party as by many. With the exception of the Social Democrats, the Czech parties had one single aim, a disruptive aim from Austria's point of view: to restore Czechoslovak independence. When with dramatic suddenness the Czechs and Slovaks became masters of their own State, and were called upon to switch over from opposition to government, and from destruction to construction, they did not know at first how to behave, or what to do about it. Parties which up to then had been trained in reckless opposition were not accustomed to executive responsibility. It is true that most of their leaders were well meaning, but they were slow in realizing that the creation of a government and participation in the Executive was not the same thing as maintaining an active opposition. And once a system of many parties becomes established, it acquires a tough power of endurance. Strong party loyalty, and the individual prestige of party leaders, made fusion difficult and the two-party system well-nigh impossible.<sup>1</sup> The shock of Munich was needed to merge the Czech political parties and combine them into two party groups.

#### *The Party Confusion.*

There are few countries in the world where such complications and variety in the principles underlying the creation of parties could be found as in Pre-Munich Czechoslovakia. Apart from monarchism no modern political trend was without a party under the Republic: Conservatism and Liberalism, Individualism and Collectivism, Nationalism and Internationalism, Centralism and Regionalism, Catholicism and Protestantism, Industrialism, Commercialism, Agrarianism and Urbanism. All these elements were in every way mixed up, combined and mutually interwoven in the sphere of Czechoslovak political party life. Personalities also played their part. After the liberation of the State, the political parties were closely associated with different names which had acquired fame in the fight for liberation in the years between 1914 and 1918, and whose power of attraction was exploited freely by

<sup>1</sup> Thus, though the Social Democratic Party and the Party of Czechoslovak Socialists grew very much alike both in ideology and practice, and were very near fusion at one time, they never actually merged.

the parties in their electoral campaigns. Thus various odd parties and combinations used to shoot up overnight before election, growing like mushrooms, in the febrile climate of election campaigns. Fortunately, like mushrooms, they soon disappeared again, leaving room for others to grow in subsequent elections.<sup>2</sup>

Apart from ethnic divisions, the dominant factors influencing party structure in Czechoslovakia were, of course, economic and social. Even parties with a denominational backing, such as the Czech, Slovak and German Catholic parties, began to build up their programmes on social matters once the issue concerning the relation between the Church and the State had been fought out.

#### *Rigid Party Discipline.*

Party discipline in Czechoslovakia was like a rod of hard steel. It was definitely stricter than in Great Britain, and a Czechoslovak cannot but smile when reading British complaints about the "tyranny" of party whips, and hearing occasional attacks by British M.P.s upon their leaders' "dictatorship." He knows better. What made party discipline in Czechoslovakia so harsh? There are several reasons, and most of them have been mentioned in the preceding chapters. The average Czechoslovak voter elected the party first, the man second. Hence the broad masses of the electorate were not worried by the system of fixed-order lists of candidates; and the agitation for its elimination or relaxation, which was conducted chiefly by advanced intellectuals, led to nothing. Constituencies were large, the lists long, and the average voter could seldom judge the relative qualities of the candidates. He became accustomed to rely more and more upon the judgment of his party. All this meant that individual party members, anxious to be put forward by the party as candidates for public offices and to keep in after they were elected, had to bow unconditionally to the strict rules of party discipline. This held good most of all in the case of M.P.s whose very careers were at stake. A serious conflict with the party meant at best rejection from the party list at the next election. And without the party's support, the outlook for re-election was very poor indeed.

To this extent Czechoslovak practice is not fundamentally different from the British. There are, however, two facts which make all the difference and change the iron of British party discipline into the very

<sup>2</sup> The following parties appeared at various times: The Debtors Party; the House-Owners Party; the Tenants' Party; the League against fixed-order Lists of Candidates; the "Modráčkovci" (followers of Modráček, a member of the Social Democratic Party who had seceded); the "Práškovci" (followers of Prášek, a deputy who seceded from the Agrarians).

hard Czechoslovak steel of unconditional submission to the orders of Czechoslovak party leaders and party whips. We have already referred to both of them earlier on. The first is the difference brought about in Czechoslovakia by the system of proportional representation. It is a generally recognized fact that, *ceteris paribus*, proportional representation makes a member more a slave of the party than does the majority system. The second, which is still more important, is that blank cheques of blind obedience were signed by all party candidates prior to their adoption as candidates. If the party can have its M.P. deprived of his seat and the vacancy simply filled by the candidate next on the party's list, then it is clear enough what will happen should that member disobey the party whips.

This rigid party discipline, typical of the Czechoslovak party system, influenced Czechoslovak parliamentary practice more than anything else. We shall study the consequences in the next chapter. On ethical grounds it can hardly be justified, but it rendered great service to the State and, oddly enough, to the cause of Democracy as well. It was probably the only way of overcoming the drawbacks of a multiple-party Parliament with its evil influence upon the stability and efficiency of the Executive. Only the rigour of the party leaders and their unchallengeable power over the party members in the House could hold the various coalitions together, and maintain the stability of a government. Only thus could the political parties in Czechoslovakia fulfil the task which was theirs in the life of a modern democratic State: that of sifting and organizing political opinion for the purposes of government, and of substituting for a heterogeneous complex of conflicting views and ideological differences, a few broad political issues.

These factors must be borne in mind and well weighed before we venture to condemn the means adopted to maintain party discipline in Czechoslovakia. However worthy the end, the means were certainly oppressive, but it is difficult to conceive any alternative in view of the existence of so many parties. One evil had to be used to fight another. If one evil could be eliminated, as we hope it will be one day, and the number of parties reduced, the use of the antidote could then be substantially curtailed.

#### *The Relative Stability of the Political Parties.*

A further notable feature of the Czechoslovak political party system was the high degree of stability of the leading parties. Although these parties alternately gained and lost votes, the fluctuations were small. The only two exceptions were the splitting of the Social Democratic Party when the Communist Party came into being, which led to the former's

defeat in the general election of 1925, and the fusion of the German parties after 1933, which gave birth to the Henlein party. From the tables contained in the footnote on pp. 85-6 we see that the relative strength of the leading Czechoslovak parties, the Agrarians, the Social Democrats (apart from the Communist secession referred to), the Czechoslovak Socialists, the Czech Catholics and National Democrats, varied little. The Communist Party lost a quarter of its big 1925 poll in 1929, but became stabilized with 30 seats in 1929 and 1935. The Slovak Catholics have remained steady throughout the last three elections.

A swing leftward was always followed by one to the right at the subsequent election, and vice versa. The Left never attained a majority. Out of a total of 300 the Left secured 136 seats in 1920, 115 in 1925, 122 in 1929, and 107 in 1935. The more marked fluctuation in 1935 was due chiefly to the growth of Nazism among the German minority, which seriously reacted on the German Social Democrats and Communists.

The primary cause of this stability was undoubtedly the political maturity of the Czechoslovak electorate. The Czechoslovak voter always weighs his vote very carefully. Once he has pledged himself to a particular party he keeps his pledge through thick and thin. Since on the whole the chief parties followed the line of their programmes, he had no reason to change his colour. If ever he did change, he supported the party nearest to the one he supported before. Again, proportional representation rarely permitted the sweeping fluctuations in the relative strength of parties such as are usual under the majority system. "Proportional representation," says a prominent Czech writer, "in patiently and automatically counting all the votes that have been registered, maintains the power of the party, whatever sort of coalition is formed against it." Finally, a fairly large proportion of ordinary men and women were members of political parties in Czechoslovakia. These bodies were a source of great strength to the parties, not only as representing a guaranteed number of votes, for the organized party members alone could hardly sway the issue, but as a highly effective element for the purposes of agitation.

#### *No Real Divergence in Fundamentals.*

As we have seen, the Czechoslovak parties represented every political shade of opinion. With all this, however, there was not between them any unbridgeable divergence in what Cromwell was, I think, the first to describe<sup>1</sup> as the *fundamentals* of State life. The leading Czechoslovak parties were not irreconcilably opposed to one another in their views of the broad principles which were to determine the basic organization of the political, economic and social life of the community nor about the tactics

<sup>1</sup> Cf. Marriott, *The Mechanism of the Modern State*, II, p. 447.

to be adopted in giving practical expression to their political postulates. They were, to use the words of Professor Laski, fundamentally at one upon all the major objects of governmental activity.<sup>1</sup>

This assertion may seem rather daring and surprising in view of the fact that the Czechoslovak political parties included a Social Democratic Party and also a Communist Party—with their respective policies of complete and consistent socialization, the former more radical than the British Labour Party, the latter professing the ideology of class war. It is true that there was also a Fascist Party. Nevertheless if we examine the position more closely we find that the extremes were not as violent as they seemed.

The Fascist Party can be dismissed altogether. It was a sporadic and ephemeral creation quite unfitted to the Czechoslovak background. It secured seats in only one of the general elections, and then obtained only 6 out of 300.

The Communist Party underwent a radical change in the years before Munich. It shed its ideas of a communist world revolution and the "dictatorship of the proletariat" slogan was dropped. Communists formed a united front with democratic socialism. Their social postulates and their attitude toward democracy became indistinguishable from that of the Social Democratic Party. Yet as they still remained outside the Cabinet, and were not bound by any consideration for other parties' aims and *desiderata*, they were able to follow a more vigorous line of policy. They did not have to carry on their shoulders the burden of Government responsibility, so much weightier in Czechoslovakia because of the constant necessity for coalition bargaining and compromise.

The divergence of political opinion on the vital issue of the economic foundations of society and the regulation of social questions was less in Czechoslovakia than elsewhere. Czechoslovak socialism was perhaps less radical, less rigid, than elsewhere except in Britain. The Czechoslovak right-wing bourgeois parties, in their turn, were more socially-minded than in other countries. The Agrarian Party, as we have seen, stood firmly for agrarian reform, and participated in building up the progressive Czechoslovak system of social insurance. The National Democratic Party, representing big business, demanded the nationalization of forests and mines in 1920, while Catholicism took political shape in the guise of Christian Socialism.

The Social Democrats, the Agrarians, the Socialists, the Retailers' Party, the Catholics, and even the National Democrats, sat together in the same Cabinet, collaborated helpfully in directing the affairs of the State, and agreed on a workable programme of government. What

<sup>1</sup> *Parliamentary Government in England*.

further proof is needed to show that the differences between them, viewed from the wider standpoint of the needs of the State, were only in "circumstantials." This was undoubtedly one of the greatest assets of Czechoslovak democracy, and one of the chief elements in its success.

### *The Typical Czechoslovak Political Party Member.*

And now we come to the last point to be dealt with in this chapter: the character of the average Czechoslovak party member, one of those hundreds of thousands that constitute the backbone of their parties.

The Czechoslovak member is most loyal to his party. He is convinced that it is *the* best party, and few join a party out of sheer opportunism. Within the party its members debate against each other heatedly. Outside they defend the party to the last breath, and are often blind fanatics, incapable of impartial judgment. Their own party is seen white against the black that stains all others not associated with it in the electoral struggle.

The member conscientiously does all he can for the party, however unimportant his job may be, whether it is party representation or the selling of tickets on behalf of his local organization. All he asks for are a few words of acknowledgment and recognition at the annual meeting, and he is willing to toil on for another year. He would be very much upset if he were relieved of his function. But even in such circumstances, beyond resorting in his own local organization to sharp opposition as an outlet for his bitterness, he remains loyal to the party, however loudly he may criticize the local party's Executive Committee.

He has also great respect for the higher functionaries of the party, his ministers and deputies. He expects cordiality from them, a friendly grasp of the hand or a slap on the shoulder. However, he accepts the everlastingly stereotyped "reports on the political and economic situation," applauds, makes enquiries during debates about various matters (for he likes to show up well in discussions), but he is not over-critical. He is ready to allow his leader to carry on as the latter thinks fit. He may occasionally condemn his actions, but he goes no further and does not resort to extremes. In this respect the leaders of the party are left fairly undisturbed by those beneath them, and if they quarrel it is mainly amongst themselves.

Finally, the average party member does not unduly burden his functionaries with his own private affairs. He regards his relationship to the party more as an obligation than as a right, and it is only when some real injury is done to him or when things go very badly with him that he turns to the party for assistance. Generally speaking, this principle was respected except when a member tried with party help to obtain a post in the public service. This abuse was far too common in the Republic.

## CHAPTER V

### THE MUTUAL RELATIONS OF THE EXECUTIVE, THE LEGISLATURE AND THE POLITICAL PARTIES

Now that we have surveyed the Executive, the Legislature and the political parties, as well as the two Courts which participate in the formation of the Czechoslovak political order, we may glance at the way in which their mutual relations find expression in political practice. For it is in this field that a modern democracy shows its maturity, and the success or failure of any democratic order depends on a proper balance of three factors. The stability and efficiency of the Executive; the effectiveness of parliamentary control; the loyalty of parties to their mission, and a due measure of collaboration and mutual control. The achievement of a real democratic government can only be secured by a due co-ordination of these three fundamental elements in its composition. We have dealt partially with their mutual relations in preceding chapters. Here, however, we must be more specific.

#### 1. THE CABINET RULES PARLIAMENT

The Czechoslovak system of parliamentary democracy developed in practice into what is usually described in political science as a Cabinet régime. That is to say, of the two chief organs of authority (the Executive and the Legislature) the first acquired superiority over the second. As in every other régime of a parliamentary type, in Czechoslovakia legal primacy belonged to Parliament, which alone was the direct representative of the will of the people. But the real authority was in the hands of the Cabinet. In this the young Czechoslovak Republic fortunately followed the time-honoured British practice rather than that of the French.

The Czechoslovak Cabinet treated its Parliament as a willing and obedient steed. It was sometimes restless, at times it even resisted or kicked, but it never broke away from its master. Parliament dutifully discussed the proposals laid before it by the Cabinet, respected the latter's wishes and carried out its directions. Nothing of importance was ever changed in the Government's Bills. Parliament listened to Cabinet statements, put questions to its members, made interpellations, and the Opposition opposed and criticized the Executive. In the end, however, Parliament invariably complied with the proposed resolutions as required by the Cabinet. Lively scenes, obstruction and sharp attacks upon the Government occasionally characterized parliamentary debates. But these matters

were almost always settled by the ordinary members among themselves. The Cabinet itself usually remained calm and secure above all this, even when, on occasion, one or several of the ministers took part in such frays.

How did the Czechoslovak Cabinet maintain such a powerful position in relation to Parliament, a position which so strongly recalls the relationship of Whitehall to Westminster? The answer is simple, and anyone who has studied the earlier conclusions advanced in this study will be able to answer it for himself; the position is due to the Czechoslovak political party system.

## 2. THE GOVERNMENT OF POLITICAL PARTIES

Both Cabinet and Parliament fell under the complete domination of the political parties. It cannot be said with so much truth of any other country, not even of Great Britain, as it can be said of Czechoslovakia, that its democracy was a democracy of political parties. Such a blunt assertion might appear somewhat surprising. In view of the excessive number of political parties and the whole nature of the Czechoslovak political climate, as we have described it earlier, one might have expected that Parliament would be a noisy and undisciplined gathering in which three hundred deputies would cross swords in impassioned harangues; that the individualism of its members would prevail over a sense of collective responsibility. It might be supposed that the Cabinet would be nervous and uncertain in dealing with this conglomeration of views, moods and doctrines; anticipating that some incalculable change of the Parliament's mood or sudden caprice would throw it overboard. In short, that the Czechoslovak Cabinet would often be in a similar position to the French Cabinet.

Those aware of the nature and characteristics of the Czechoslovak party system will, however, find this apparent paradox quite comprehensible. If a deputy owed his seat to the party which proposed him, and not to any special preference of his constituents for his person; and if the leaders of his party could deprive him of his seat at any time through the Electoral Court—then it becomes quite clear why Parliament was completely in the grip of the political parties.

In such a situation a member could scarcely be expected to oppose his own party, unless he was guaranteed a place on the future list of another party, and general election was impending. For as the Czechoslovak electoral system made no provision for bye-elections, the loss of his parliamentary seat meant that a member might be deprived of any possibility of returning to Parliament until the next general election, i.e. for a number of years. The Czechoslovak Parliament thus ceased to be what

was originally intended by the Constitution. It ceased to be a body of free representatives of their constituents, executing their mandates according to conscience as they had solemnly promised, and not according to instructions from others. Parliament instead became a *collegium* of several party groups, acting and voting *en bloc*, according to principles agreed upon or laid down in advance.

By dominating Parliament, the political parties also, of course, dominated the Cabinet, for in a parliamentary democracy this is the only thing that can happen. In all modern parliamentary democracies Cabinet responsibility to Parliament means responsibility to a political party or parties. In Czechoslovakia, since political parties were numerous and none had a majority in Parliament, it meant government by a party coalition. Thus in Czechoslovakia the political responsibility of the Executive to the Legislature became the most powerful constitutional channel for the party domination of the Cabinet. There were two ways by which government by party coalition was effected. Either the leaders of the parties constituting the coalition themselves became members of the Cabinet, the leader of the strongest party automatically becoming Prime Minister. This was government by political parties pure and simple. Or the leaders of the political parties in the coalition remained outside the Cabinet but established themselves as a political body which directed the Cabinet's policy from behind the scenes. Such was "The Five," the notorious institution of the *Pětka*, which is interesting enough from a political and constitutional standpoint to be worthy of special mention.

#### "The Five"

After the split in the Social Democratic Party, Tusar's Cabinet was replaced in September 1920 by Černý's Cabinet of civil servants. In order to secure the necessary majority in Parliament, Černý's Cabinet had to seek the political support of five Czechoslovak political parties. These parties found it convenient to establish a special political Council in which each of them was represented by one of its outstanding members. These "Five" thus became the real political government of the country. Having behind them a compact mass of five big political parties with a majority of deputies clad in the straitjackets of rigorous party discipline, they could defeat the "official" government at any time, and thereby compel its resignation. Owing to this fact decisions on all the important political questions really lay with them and thus they were in a position to impose their will upon the Government formally in power. The Černý Cabinet became little more than a purely administrative body of departmental directors. (Members of the Cabinet need not have been M.P.s in Czechoslovakia.) The official yearbook of the National Assembly for the years

1920 to 1921 comments on the "Pětka" in a way which is both interesting and significant: "An intermediary between the Cabinet and the parties was needed to preserve harmony between Cabinet and Parliament and prevent conflict and disturbances. A reliable instrument for this purpose was constituted by an association of the representatives of the five great Czechoslovak parties, whose deliberations were attended by the Prime Minister. This unofficial body, known in the press as 'The Five,' rendered valuable services both to Parliament and to the Cabinet in moments when issues were obscure."

Some party body, functioning outside the Cabinet but making decisions of major importance, remained, however, a quasi-permanent institution of Czechoslovak democracy even when the short era of "specialists" was over and normal cabinets of politicians had taken their place. Sometimes in the place of "The Five" there appeared an "Eight" or some other number—according to the number of parties in the coalition. Such a body of coalition leaders proved useful even when its members or most of them were sitting in the Cabinet proper. It was easier first to negotiate and come to terms within such a small *collegium*, and then to induce the whole Cabinet to accept those decisions, than to begin such discussions in the full Cabinet meeting.

Many objections were advanced in Czechoslovakia against "The Five." They were accused of setting up a "Government" which was outside the constitutional Cabinet proper. Here was a *conclave* of five men, meeting in *camera* and beyond public control, discussing State matters of the highest importance. All this was true, and the reproaches levelled at "The Five" were in many respects justified. We must not, however, lose sight of one fact: in view of the number of Czechoslovak political parties and the resulting necessity for coalition governments, it was difficult to dispense with such an institution. A unified political will had to be created *somewhere* in the State. In a State with a two-party system such as Great Britain (where one party by itself obtains a majority) this unified will is usually expressed by the Prime Minister as the leader of the government party together with his colleagues in the Cabinet who belong to the same party. In a State which has a many-party system such as Czechoslovakia, the same thing is necessary, but it must be expressed by a body consisting of the leaders of all the Coalition parties. "The Five," remarked one of their members, at a time when this institution was meeting with strong criticism, "are a necessity, they are the alternative to chaos. Without 'The Five' Parliament would become a disputatious body, in which reasonable politics would be replaced by demagogery. Do not saw off the branch on which you are sitting!" And there was much truth in what he said.

The defect of the institution of "The Five" did not lie in that institution itself, but once again in the fact that there were too many parties in Czechoslovakia. "The Five" were only the inevitable by-product of these conditions, or if you will, a necessary evil. They rendered very useful service and facilitated the work of the Government and the activity of Parliament. As we remarked in our introduction, one of the basic elements in the success of the Czechoslovak system of parliamentary democracy was political compromise. And as one astute observer of Czechoslovak political relations remarked, "The Five" comprised a workshop of specialists in compromise. As long as there are many parties, there will be a need for more and more compromise, if they are to govern at all. Hence the need for a body of "Five" or something analogous to it. Should party relations become more simplified and it becomes possible to create a Government from one party alone, or at most two, the function of "The Five" will cease automatically. Their methods and the quality of their work were rightly criticized. But, again, this was not the fault of "The Five" themselves but of the whole coalition system, about which something must now be said.

### 3. THE COALITION SYSTEM

The Czechoslovak coalition system was the direct outcome of a plurality of political parties. At no period in Czechoslovak post-war politics was there a party which could have secured a majority in Parliament and so it was always necessary to form the majority from a number of parties. Representatives of different political parties sat side by side in one and the same Cabinet even though their sympathies might sometimes be contradictory. Social Democrats took their seats side by side with the Agrarians and Retailers, while Catholics and even the ultra-nationalist National Democrats might on occasion be found in the same Cabinet with members of the left and right German parties. Apart from the Communists and the Henleinists, every large party enjoyed a spell of government at one time or another.

This meant of course that an inter-party policy had to be found to which all these highly diversified elements could subscribe, and within the framework of which they could collaborate at least for a time. A fuller analysis of these "coalition agreements" and particularly of all those difficult negotiations which took place behind the scenes among "The Five," "The Eight," etc., will be needed to enable us to form a fair idea of the great work of political compromise which was thus achieved, and understand to what extent the system embarrassed the Czechoslovak Executive and limited its efficiency. Characterizing the position, a distin-

guished Czech political writer observed: "Through a long-standing system of coalition governments Czechoslovak politics appropriated to itself all the morality and immorality of compromise. It is more experienced in this field than the politics of other States. . . . There was no other democratic principle with which Czechoslovak politicians were obliged to concern themselves more fully and more often; there was no other which demanded from them so much dexterity. Those people who had a masterly grasp of compromise gained thereby, not only fame, but nation-wide authority." It can easily be seen that it was a very difficult task to find a common formula of government, to reconcile the aims of parties which differed so much in their ideology, their political programme and their economic and social background, as did the Agrarians and the Social Democrats, not to speak of the National Democrats and the Germans.

To secure even a minimum degree of co-operation all parties of the Coalition had to make far-reaching concessions to one another—both in respect of policy and in the matter of personal preferences. This was not a bad thing in itself. The ability to yield a point in the interests of the whole, to collaborate with a political opponent, to estimate possibilities realistically and come to a fair compromise, to find a middle way along which all can proceed, is an essential requirement for the smooth running of the State. Many foreign observers of Czechoslovak politics admired the ability of Czechoslovak statesmen to compromise, precisely because the multiplicity of political parties, none of them with a large majority, made it so difficult. They were pleased to see how the new Republic managed to secure such a high degree of government stability under such difficult conditions. They appreciated the way in which men with antagonistic ideals could collaborate in a fairly good spirit of concord and without lapsing into executive stagnation. This was one of the reasons why they considered the Czechoslovak people ideally suited to a democratic form of government.<sup>1</sup>

They were undoubtedly right, but there was another side to the question. The parties in the coalition did not always make mutual concessions for the sake of useful co-operation and for the benefit of the governed, or always put aside party politics in the higher interests of the people and the State. Often compromises led to entirely different consequences. The coalition parties, instead of adapting each other's policy to a common line, and setting aside some of their more extravagant claims and postulates, would abuse their participation in the government to carry them through more easily. For a concession approved in favour of one party, each of the coalition parties secured an advantage in return. These mutual

<sup>1</sup> See, for example, Giraud in the work already quoted, p. 267 *et seq.*

concessions were not, of course, graded according to the significance of the matter for the State as a whole, or even for a definite large section of the population, but only in accordance with the party's strength. Further, in joining the coalition, the parties agreed mutually on spheres of interest in the administration. Each became master in one or several departments, a master with very little outside control, since their main would-be controllers were alongside them, members of the same coalition. Finally, when the parties in the coalition could not come to an agreement they had recourse to the system of the "party veto." This meant that if one party disagreed with a proposal the matter simply remained in abeyance.

As a result, the word "coalition" acquired a bad name in Czechoslovakia. The abusive title "coalitionism" became the jargon for an undesirable type of political pact-making in which party interest dominated the interests of the State and the good of the whole. For this reason all Czechoslovaks disliked the very word "coalition" and accepted the system only as a necessary evil, knowing that it was unavoidable in a State with a large number of parties, and that with all its defects it compared favourably with other multiple party parliamentary democracies in Europe. For the sober fact is that without coalition the Czechoslovak system of parliamentary democracy could not have existed, and it was obvious that elsewhere the lack of the ability to form a workable coalition was gnawing at the roots of democracy, and even destroying it altogether.

#### *The "Swing of the Pendulum"*

In Czechoslovakia there was none of what is sometimes described in political science as "the swing of the pendulum." This is undoubtedly an important political law which regulates the alternation of the political parties in the government of every well-balanced democracy, whatever its system. If a political party or a political tendency is in power for some time it is certainly beneficial to the well-being of the State should the chief political party or tendency opposed to it be returned to office, while it in turn passes over to the opposition.

This law has found marked expression in the British<sup>1</sup> and the Ameri-

<sup>1</sup> In Britain, for example, of the 39 Cabinets which have existed since the time of William Pitt, i.e. since 1804, up to the time when the Labour Party took the place of the Liberal Party in the British political system through the electoral victory of Labour in 1923 and the creation of MacDonald's Labour Cabinet in May 1923, there were 22 Conservative (Tory) Cabinets and 14 Liberal (Whig) Cabinets, and it was only during the War of 1914-18 that there were two Coalition Cabinets. Further, the alternation of both tendencies in the Government was fairly regular; the period from 1807-30 which saw an unbroken series of six Tory Cabinets was an exception. It would seem that this alternation continued after the World War of 1914 as between

can<sup>1</sup> political systems. Admittedly, the best conditions for its operation were present. The established traditions, on the one hand, and the two-party system and the principle of majority representation on the other, helped to develop and to maintain it. It should, however, also be possible under a many-party system with proportional representation, even if it worked less smoothly. A healthy political system requires the parties to form at least two blocks, each concentrating in itself parties which are akin to one another in their programmes and represent a well-defined common policy. These blocks can then hold office alternately and the "swing of the pendulum" intervenes from time to time with its salutary effects. In Norway and Sweden, for instance, the Socialists periodically alternated in the government with the Conservatives in spite of the overwhelming strength of the former.

In Czechoslovakia this alternation of Right and Left in the government never occurred. What happened was that a socialist-bourgeois coalition alternated with a purely bourgeois coalition. One party would fall out of the coalition, another would join it, and the composition of the Cabinet would be slightly modified in accordance with the elections and become a shade more Left or Right. But none of these manifestations could ever be described as a full "swing of the pendulum." It is noteworthy, for the Conservative and the Labour Parties. After the resignation of Lloyd George's Coalition Cabinet the Conservatives came into power. The Cabinet of Bonar Law and Baldwin's first Cabinet were followed by the Labour Party, MacDonald's first Cabinet. They were replaced in their turn by a Conservative Government, Baldwin's second Cabinet, which again gave place to MacDonald's second Cabinet. Then in August 1931 the "swing of the pendulum" ended and a Coalition was set up, but by this time normal conditions no longer existed. They were disturbed first by the great economic crisis and later by the international political crisis which led to the present war. These coalitions can therefore be considered as being a symptom of crisis, and hence exceptional.

<sup>1</sup> A similar manifestation may be observed in America which—since America has a presidential system of democracy—may be traced in the succession of Presidents. Thus after George Washington, who represented national unity and in whose case therefore the party political factor did not count, the next President was John Adams, a member of the Federalist Party. He again was followed by President Jefferson, a member of the anti-Federalists.

When about 1820 the Federal Party collapsed, the factor of party membership lost its significance for a time. It was only from the middle of the nineteenth century that the American two-party system (Democrats and Republicans) can be considered as having been established; since then 17 men altogether have held the office of President—if we begin with President Buchanan, who was elected in 1856. Of these 12 were Republicans and 5 Democrats. Although there were more Republican than Democratic Presidents, we can observe a certain alternation between Republicans and Democrats. In 88 years from the accession of Buchanan in 1856 to the end of F. D. Roosevelt's third period of office in 1944, Republicans have occupied the presidential chair for a total of 52 years and Democrats for a total of 35.

instance, that throughout the life of the first Republic the Agrarian Party was a member of every government coalition and never found itself in opposition. In the same way both the Czechoslovak socialist parties and the Czech Catholic party were, with short breaks, permanently in the Government. And when in 1929 the German parties entered the Government they stayed there almost uninterruptedly up to 1938.

Though preferable to too rapid a succession of cabinets in power, this absence of alternation between Left and Right was certainly a liability in the balance sheet of Czechoslovak democracy; one which was aggravated by the fact that certain departments of the administration remained for years in the hands of one political party.<sup>1</sup> A party which is almost constantly in the Government ceases to consider that its period of office is only temporary and that after the expiry of its mandate it must give the public a satisfactory account of its work. Such a party ceases to be conscious of the fact that its authority has certain ethical and political limits which it must not exceed, and that if it does exceed them its successors are likely to adopt an extreme policy in the other direction. It becomes too accustomed to power and to exploitation, and on occasion may become despotic in its allotted sphere of influence. It is inclined to consider the departments entrusted to its care as its party agencies and the civil servants of these departments as its own officials. Lord Acton's farsighted maxim "all power corrupts and absolute power corrupts absolutely" is very apposite here.

On the other hand, those parties which remain for an excessive period in opposition lose any sense of government responsibility; since they lack any opportunity of putting their party slogans and their political principles to the only test that matters, that of responsible action in government. They cease to appreciate the real relationship between Government and Opposition and become increasingly querulous, doctrinaire, obstructive, negative and extremist.

It is clear enough why the "swing of the pendulum" was absent from Czechoslovak politics. The reason lay chiefly in the fact that the Opposition found it impossible to form a unified constructive policy which would render them competent to take over the reins of government. The Communists, who formed the largest opposition group in the Czechoslovak camp, were absolutely opposed to any participation in the Government. As they could not be counted on as a possible partner in any coalition, no left-wing Cabinet was feasible even if the Left had had a majority in Parliament. The Hungarian and German nationalist parties

<sup>1</sup> Thus the Ministry of Agriculture was in the hands of the Agrarian Party for twenty years and the position was similar in the case of the Ministry of the Interior and the Ministry of National Defence.

were also in uncompromising opposition. The other German parties were also in opposition up to 1929; and in 1935 came the Henlein party. In such circumstances it is not surprising that no block of parties could emerge and successfully challenge the Government in power at a general election, with a suitable constructive programme for the alternative government of the country. And this is just what is required if the "swing of the pendulum" is to work. "Every opposition," says Professor Laski, "has to pass through two phases if it is to transform itself into a Government. There is the phase where it seeks to make the case against the Cabinet of the day; after a period, it is rare for such a case not to offer itself on solid grounds. But there is the second and more difficult phase, in which the negation of the first is transformed into the ability to convince the electorate positively not only that the government is a bad government, but also that for the sake of the country, the opposition ought to take its place as soon as possible."<sup>1</sup> This positive second phase was unfortunately never achieved in Czechoslovakia. Since they had no alternative except joining an unorganized opposition it is understandable that the political parties of the government majority, in their own interests and, in the last resort, in the interests of the State, held together in spite of the differences in their policies, preferring to make considerable mutual concessions in order to remain in power. "It has been the absence of an organized and coherent opposition, no less than the absence of stable cabinets, which has weakened the cause of democratic government in a number of European countries," says Professor Barker.<sup>2</sup> To some extent this dictum applies to Czechoslovakia as well.

#### 4. THE INFLUENCE OF THE PRESIDENT

To see the three forces—The Executive, the Legislature and the political parties—in their right perspective, we must appreciate the influence exercised upon their harmonious collaboration by both Presidents of the Czechoslovak Republic, T. G. Masaryk and Dr. Edward Beneš.

We have already observed how relatively powerless the Czechoslovak President is in terms of the Constitution. We have seen also how dualism worked within the Executive. In this respect Czechoslovakia offers a striking example of the way in which practice is able to adapt written rules to its own purpose. The *de facto* position of the President in Czechoslovakia, as even outside observers have pointed out,<sup>3</sup> is far more influ-

<sup>1</sup> *Parliamentary Government in England*, p. 163.

<sup>2</sup> In his *Reflections on Government*, p. 413.

<sup>3</sup> Thus Giraud observes in the above-mentioned work (pp. 270-71):

Bien que la Tchécoslovaquie soit une démocratie parlementaire du type franco-britannique, le chef de l'Etat y joue un rôle politique beaucoup plus considérable que

ential than the terms of the Constitution would indicate. In this respect the Czechoslovak Constitution is by no means made to measure, and the ready-made garment was not a perfect fit for either President.

In view of the fact that the Czechoslovak Constitution is not so generous in this direction as, for example, the French, we may ask what gave the Czechoslovak President such exceptional power, or why practice so soon overruled the intentions of the authors of the Constitution, whose vivid memories of Hapsburg despotism had led them to limit the President's authority.

A tremendous prestige surrounded the name of T. G. Masaryk. Apart from a few ultra-nationalist elements, and the Communists in their first years, the whole Czechoslovak people stood solidly behind its great leader and teacher. Both the Czechs and the Slovaks saw in Masaryk the founder of their new State, while a solemn statute passed by the Czechoslovak Parliament some years later declared for all time that "T. G. Masaryk had rendered meritorious services to the State." This was no mere formality, but a supreme acknowledgment, a true expression of what every Czechoslovak realized and felt deep in his heart. Masaryk's revolutionary work abroad on behalf of Czechoslovakia was acclaimed and acknowledged by all. All this gave the President-Liberator, as he came to be called, an enormous degree of authority. A similar prestige accrued to Dr. Beneš, his chief collaborator during the last war and in the new Republic. Moreover, it was Masaryk who recommended him to the nation as his successor in 1935.

The outstanding personal qualities of these two great democratic leaders have been fully described by so many writers, both Czechoslovak and foreign, that it would be superfluous to say anything more on the subject in this study, which is concerned with institutions rather than with personalities. The unusually strong positions that these great leaders

celui du Président français ou du Roi d'Angleterre. La raison en est que le Président d'hier Masaryk et le Président d'aujourd'hui M. Beneš, qui furent les principaux artisans de la résurrection nationale, ont un prestige et une autorité exceptionnels dûs à leur grande valeur personnelle et aux services qu'ils ont rendus. Le rôle important joué par le chef de l'État est un trait particulier du régime tchécoslovaque. On pourrait être tenté de le retenir pour ranger le régime dans la catégorie des régimes parlementaires avec alternation présidentielle, tels le régime allemand de la constitution de Weimar et le régime espagnol de la constitution de 1931. A la vérité l'influence du President de la République tchécoslovaque ne résulte pas de prérogatives spéciales qui lui seraient conférées par la constitution, le Président se borne à conseiller et à persuader, mais comme il possède personnellement une très grande autorité morale et une compétence sans pareille, et comme il suit très attentivement les affaires de l'État, ses avis pesent d'un très grand poids. L'influence du Président Masaryk est pour beaucoup dans la façon dont la Tchécoslovaquie a surmonté les grandes difficultés qu'eut à affronter l'État naissant.

already occupied were further enhanced by their unique qualities. A tradition thus arose which was not dissimilar to that which we find in the United States. Indeed, the Czechoslovak people looked more to the Head of the State, to their President, than to Parliament. This was particularly revealed in the critical days of Munich when, in the end, the whole burden of both international and domestic affairs fell upon the shoulders of the President.

The effect of this powerful position of the President upon the working of the Czechoslovak system of parliamentary democracy was extremely beneficent. The limitations that might have resulted from that dual partition of the Executive with which we dealt in our first chapter were avoided. The President's influence served to avert the worst excesses of party extremists. This was perhaps his most important achievement, his most substantial contribution toward the success of Czechoslovak democracy. The President negotiated with party leaders, discussed the main problems of the administration with them again and again, argued, persuaded, brought them together when they would not co-operate of their own accord, and assisted them in arriving at a fair compromise and in forming satisfactory government coalitions. He helped to mitigate party passions, to modify personal ambitions, to convince by rational arguments, to appeal to better feelings—all in an untiring endeavour to solve as harmoniously as possible all the difficulties which might have endangered the smooth working of the government. In this field both Czechoslovak Presidents, standing above the parties and yet not separated from them, performed an important work, the value of which is yet to be assessed. They have indubitably played a vital part in securing the successes of Czechoslovak democracy. The young Republic was fortunate in being led from its very birth by two such outstanding men with clear vision, great knowledge and experience, strong determination and inexhaustible will-power, having sufficient strength and prestige to gain a proper hearing for their arguments even with the most obstinate partisan die-hards. The advances of civilization, it has been said, are due to the small phalanx of eminent men which each civilized people possesses. T. G. Masaryk and Dr. Beneš are no doubt two of its most prominent members.

Some party leaders saw in the authority of the President an excessive check upon their own initiative, and he became a thorn in their sides. The late leader of the Czechoslovak Agrarian Party, Švehla, gave full expression to such feelings, when, according to an eminent Czech political writer, he frankly said to President Masaryk in a discussion on the question of his successor to the Presidency: "Some sort of Academy President will always be found; all we want is a figure-head for public

display." An attempt to enthrone such a figure-head instead of a strong personality was actually made after Masaryk's abdication in 1935, but fortunately for the country, the Masaryk tradition prevailed and the obvious will of the people won the day. T. G. Masaryk was followed by another powerful President and democratic leader of the first magnitude, Dr. Edward Beneš. History will one day prove how right this step was and what it meant for the State that he, and not some "Academy President, some figure-head," became President.

## CHAPTER VI

### LOCAL GOVERNMENT

LOCAL self-government has been aptly characterized by Bryce in his classic work *Modern Democracies* as the finest school of democracy and the best guarantee of its success. And as is indicated by all the chief works on the subject, the values of local self-government are recognized by all the outstanding theoretical and practical exponents of democracy without exception. If then we are to study Czechoslovak democracy at work we are bound also to consider the form assumed by this "school of democracy" in Czechoslovakia.

There are few problems of Czechoslovak democracy on which foreigners are so abundantly, and yet so badly and inaccurately, informed. For knowledge of Czechoslovak local government reached foreign countries through contaminated channels. It came in poisonous blasts from that storm of calumnies let loose upon the world in 1938 by the crafty Hitler-Henlein partnership, which was determined to disgrace the name of Czechoslovakia in the eyes of her friends in the West in order to achieve its own evil ends. Account has also to be taken of the evil effusions of an ambitious clique of Slovak separatists who adroitly veiled their treason under a cloak of autonomy, which was thrown aside instantly after Germany had helped them achieve their real aim of breaking up the Czechoslovak Republic. Nothing can more clearly indicate the falseness of their agitation for decentralization than the fact that the moment the Germans had helped them to set up their puppet State they dissolved local councils, installed their commissars in their stead, and adopted a policy of rigid totalitarian centralism, supported by German bayonets and their own S.S. formations, known as the Hlinka Guards.

In such circumstances the stories spread abroad about Czechoslovak local government were grossly distorted and full of deliberate falsifications. The outside world could not be expected to take the trouble to study the local government of a remote country and the difficulties with which it had to cope. Therefore it was widely held that, since they were continually hearing complaints, there must be something wrong.

It will therefore be my task in this chapter the outline briefly the main features of Czechoslovak local government in theory and practice. Both the merits and defects of the system will be described frankly and objectively. For defects there were; and not only Germans and Slovaks, but the Czechs themselves were aware of them, and worked steadily and progressively for their elimination. The reader himself will be able to

form his own opinion as to whether the denigrations circulated abroad about Czechoslovak local government were really justified. An objective analysis of this situation is all the more easy for two reasons:

(1) The present war has scattered all the pretences and allegations that the so-called Czech crisis of 1938 was caused by a lack of Czech understanding for minority claims of autonomy. Consequently the problem had largely ceased to be an international one, and has once again become the internal affair of Czechoslovakia which it should have always remained.

(2) The Czechoslovak President has recently passed a Decree, which will be discussed later, giving as full a scope to regional and local government as may be found in any other country.

*Centralism and Regionalism in the Czechoslovak Constitution of 1920.*

It has been objected that the Czechoslovak Constitution of 1920 had a centralizing tendency. This is entirely correct. Though never formally expressed in the Constitution, the tendency is evident both from its style and wording and from its general ideology. This explains why the Constitution expressly abolished the existing provincial Diets which under the Hapsburgs constituted a certain, though imperfect and shadowy, expression of local autonomy.

The centralizing mood of the Czechoslovak Revolutionary National Assembly, which accepted the Constitution of 1920 by a large majority, is easily comprehensible both from a political and a psychological standpoint. Austria-Hungary passed on to the new Republic a legacy of hotch-potch. As a result of the previous Austro-Hungarian dualism, the western part of the State was ruled by a different legal order from that established in the east. In some small districts, taken over from Germany, yet another system was in force. Moreover, the Czech Lands had three different types of provincial legislation. Anyone familiar with the Czech passion for systematization will readily understand how uncongenial this diversification was to the authors of the Constitution. The whole aim of the Czechs was to unite and set up a strong State. Such an aim always makes for centralization.

The tendency was strengthened by the separatism of the German-speaking population. When Austria-Hungary collapsed in 1918 and the Czechs declared their independence, the German population of Bohemia, Moravia and Silesia thought the moment opportune for breaking up the 1,000-year-old frontiers of the Czech State. They established separate governments in the Czech frontier regions where they had immigrated and settled in the past centuries, and decided to join Austria. Quickly

forgetting how they had oppressed their Czech fellow-citizens before 1918, they suddenly became the foremost protagonists of Wilson's slogan of self-determination. And when the peace-makers of 1919 decided against them they loudly declared their dissatisfaction, regarding the decision as being only provisional. They openly admitted at the time that they were only waiting for Germany to grow stronger to renew their secessionist claims.

German restlessness has ever since endangered Czechoslovak solidarity and has prevented full decentralization. Loyalty to the State is a *conditio sine qua non* for all minorities. "No State, not even a democratic one," says Dr. Beneš in his *Democracy Today and Tomorrow*,<sup>1</sup> "will venture on any greater degree of decentralization if it is threatened by separatist movements and aspirations. If decentralization incurs the risk of losing territory nobody in the world will enforce it."

Yet in spite of its integrating character, the Constitution of 1920 contained important germs of decentralization.

Thus it gave full autonomous status to Carpathian Ruthenia, the easternmost part of Czechoslovakia. In accordance with the Treaty of Saint-Germain of 10 September, 1919, the Constitution awarded to this part of the Republic, inhabited by a Slavonic people known as Ruthenians, a provincial Diet of its own with the power to legislate in all linguistic, educational, and religious matters as well as local administration. The administration of Carpathian Ruthenia was to be headed by a Governor appointed by the President of the Republic on the proposal of the Cabinet. He was to be responsible to the provincial Diet. The Ruthenian people had been sadly, nay grossly, neglected by their former Hungarian masters and were not yet ripe for such a high degree of self-government. This had therefore to be realized progressively by a scheme which was to educate the people for their task. The office of Ruthenian Governor was established, though the autonomous Diet contemplated by the Constitution was not brought into being.

The main clauses in the 1920 Constitution in support of decentralization, however, are Articles 86, 91 and 93. Article 86 stipulates that the lay element shall be represented in the lower administrative authorities and that the rights and interests of the citizens shall be completely safeguarded. Article 91 states that "the composition and activity of self-governing bodies shall be defined by special statutes." Article 93 deals with the duty of public employees to respect constitutional and other laws in the course of their activity and expressly refers to lay members in public administration.

These clauses of the 1920 Constitution, however incomplete they may

<sup>1</sup> Final chapter of the Czech edition, pp. 247-48.

be, do at least show that its makers wanted the lay element to participate in public administration, despite their strong centralizing tendency. Local self-government was seen as a self-evident, basic factor in the machinery of Czechoslovak public administration. Thus the framers of the 1920 Constitution provided an adequate framework for decentralization both in the province of administration proper as well as in that of administrative justice.

Although the Constitution is essentially in favour of centralization, none of its terms places any obstacles whatever in the way of *administrative* decentralization and of local self-government. Indeed, the door is left wide open for what subsequent legislation might wish to decide. *Legislative* decentralization, however, for all provinces except Ruthenia is expressly rejected. Legislation became a monopoly of the Prague Parliament—as it is of Westminster.

This constitutional basis supports *three tiers of local government*, which we shall later describe in the final form which they assumed. Before doing so we will deal with a feature of Czechoslovak local government which characterized all three. This is what is called in Czechoslovakia the “double track” of public administration. This survival of an unhappy legacy from imperial Austrian times consisted, briefly, in the fact that in each of the three tiers of local government, powers of administration were shared by the State authorities and the self-governing bodies; that is, to be more exact, by local representatives of the central government on one side, and local bodies representing the local population on the other. This duality of powers is to be found in all democracies, and Britain is no exception. The moment a central government appoints one of its agents to act on its behalf in the seat of a local government, however unimportant his function may be, we have at once the germ of such a parallelism. Yet in Czechoslovakia this was the very basis of public administration. It really represented a stage in the transition from a decentralized administration by the State to the full local self-government found in Great Britain. How it worked in practice will appear from our later exposition.

#### *Provincial Government.*

The whole territory of the Republic is divided into four provinces: Bohemia, Moravia-Silesia, Slovakia and Carpathian Ruthenia. The first two are ancient provinces which have existed for more than a thousand years. The Kingdom of Bohemia, the Margravate of Moravia and the dukedom of Silesia are well known to students of mediæval and modern history. Slovakia and Ruthenia are two ancient provinces which were merged with Hungary for hundreds of years.

These four administrative units are the largest subdivisions of the

Czechoslovak Republic. They represent the highest degree in the hierarchy of Czechoslovak local government. Their administration was, however, shared between State officials, agents of the central government and the elected representatives of the provincial government. The State organ was the Provincial Governor appointed by the central government and having at his disposal a provincial office staffed by civil servants. This office was directly under the supervision of the various Prague government departments, and was in fact nothing more than their provincial agency. The self-governing bodies were the provincial Diets, two-thirds of whose members were elected, and one-third nominated by Prague;<sup>1</sup> the provincial committees, elected from the Diets; and the various provincial commissions. The number of members sitting in the provincial Diet, whose period of office was six years, varied according to the size of the provinces, the largest—120—being in Bohemia, and the smallest—18—in Ruthenia. The Diet was presided over by the Provincial Governor. Elections to the provincial Diets, and to those of the districts and communes, were by general, equal, direct and secret ballot on the basis of proportional representation. (Liability or non-liability to pay local rates or taxes was irrelevant.)

The balance of power as between the agents of the central government and the local self-governing bodies was strongly laden in the former's favour. By far the most powerful of all these organs was the provincial Governor, who, with his provincial office, managed most of the provincial administration. He also enjoyed important prerogatives over the provincial self-governing bodies. It was the provincial Governor who convened the meetings of the provincial Diet, the committee and the commissions, drew up their programmes, presided over them and directed them. The Governor was called upon to carry out their resolutions. He could even stay their execution and refer them to the central government if he thought they were in conflict with the law, or exceeded the provincial government's powers.

These reservations constituted a serious threat to the legitimate sphere of provincial self-government. Linked with the fact that one-third of the members of the provincial Diets were appointed by the central government, they weakened provincial self-government considerably. This was bitterly resented in many quarters, and regretted and condemned by many who believed in complete popular self-government. Among these,

<sup>1</sup> Originally all members of local Diets were to be elected, but the reorganization of local administration in 1927 brought with it the unpopular development that only two-thirds were to be elected and one-third nominated by the central government from a body of experts. Here, too, the fear of German separatism was the chief consideration.

the foremost place belonged to the present President of Czechoslovakia, Dr. Edward Beneš, who strongly opposed the Administrative Organization Act, 1927, which contained these restrictions, though he was a member of the Cabinet at the time.

While we must condemn these limitations imposed by the central government on provincial self-government and on district self-government, which was similarly restricted, we must also look at the reasons which influenced the Czechoslovak legislators at the time. The chief was the fear of a Sudeten secession should the German-speaking area be given autonomy. This psychological factor must not be ignored when we consider the central government's reluctance to afford fuller scope for local self-government.

Restricted though they were, the provincial governing bodies enjoyed a considerable sphere of competence. Their functions covered humanitarian, social and economic questions, agriculture, trade, communications by road, schools, cultural matters and education, science, literature and art, housing problems, and public health. The provincial governments had charge of many public institutions. They founded and maintained clinics and hospitals, schools and museums; they organized exhibitions, built and maintained high-roads, carried out various agricultural improvements, regulated rivers, electrified whole areas; they owned and administered quite a number of big estates and forests, as well as industrial plants and banks.

From this random and by no means exhaustive list we see that, in spite of the great ascendancy of the central government, the provincial government's activity was both varied and remarkable. Provincial self-government was under the protection of the Supreme Administrative Court, to which there was an appeal against undue intervention by the central government. The provincial Diet was protected against unjust procedure by the provincial Governor, since the latter had to report on the manner in which he had carried out their resolutions. If the Diet was dissatisfied, it had the right to repudiate his report. The provincial Governor was then obliged to submit the question to the central government.

#### *District Administration.*

Each of the four Czechoslovak provinces is divided into districts. Unequal in size and population, they are larger than the areas governed by an English Urban or Rural District Council, but smaller than the average English county. The main difference between an English rural or urban district and a Czechoslovak district lies in the fact that with a very few exceptions, all towns within the district are a constituent part of its organization.

The district organization corresponded closely to that of the provinces. Again authority was divided between the agents of the central government, which consisted of a district Governor and a district office, both subordinate to the provincial governor, and the district self-governing bodies, i.e. a district Diet, a district committee and district commissions. Their mutual relationship was analogous to that of the provincial Governor and the provincial office to the provincial self-governing bodies. The weaknesses in the status of the provincial Diet as against that of the provincial agents of the central government were equally evident in district self-government.

Yet in spite of all this, the activity of the district self-administration was both fruitful and effective. The powers of the district governments were analogous to those of the provincial governments, and most districts made good use of them. They ran infirmaries, orphanages, reformatories, hospitals, labour exchanges, district savings banks, social institutions, electrical and gas works, and estates. Among their other functions they owned and administered farms; were responsible for stock-breeding and game preserves; they maintained secondary, technical and commercial schools; and they built and supervised the district roads.

#### *Communal Administration.*

Communal administration was not marked by that parallelism between State and local government bodies which characterized provincial and district government. True, a distinction was made between the independent and the transferred or vicarious activity of a commune, i.e. between those functions which belonged to the commune as of right and made of it a self-governing corporation, and those which were delegated to it as a piece of State administration by the central government. But as distinguished from the provinces and the districts, the Mayor, an elected official, was called upon to carry out both duties.

As in England or Switzerland—to quote the most outstanding examples of highly developed local government—Czechoslovak communal administration was self-government in the fullest sense. It was, I am proud to say, second to none. A very critical attitude has been adopted here towards the system of Czechoslovak local government in the provinces and districts, and we may therefore be allowed to give Czechoslovak local government in the communes its full due.

The organization of Czech communes, differing slightly from that of Slovakia and Ruthenia, followed roughly the lines usual in Great Britain and elsewhere. Each of them had a communal Diet of 9 to 60 elected members, according to the size of the commune. These members remained in office for six years. The communal Diet elected from amongst

its members a communal council totalling one-third of the Diet, together with a mayor and one or more deputy mayors, and a number of communal commissions. The Diet was *de jure* the principal organ of communal self-government. But in practice it was upon the mayor and the communal council that the main responsibility for conducting the administration really lay.

The commune's powers were extensive and were no less than those of similar bodies in the most decentralized countries of Europe. A communal Diet was empowered to "do everything which first and foremost pertains to the welfare of the commune and which can be provided and carried out within the limits of its own powers." It is impossible to give an account of what the Czech communes achieved within these broad terms of reference. Jennings says in his *Principles of Local Government Law* that if he were to describe in full the activities of English local government he would be "compelled to explain a large part of the law of England."<sup>1</sup> To a lesser extent this also applies to Czechoslovak local government, especially to the powers conferred upon the communes. It was mainly left to the communes themselves to determine how they would manage their own affairs, and what practical use they made of the vast possibilities offered to them by the statutes on communal self-government. It should be said here that most Czechoslovak communes made a good and fairly extensive use of them. Beside the current business of communal administration they developed a rich economic activity. They ran their own electrical, gas and water works, they often owned and administered bakeries, mills, sugar refineries, dairies, breweries, farms and forests. They owned brickworks, blocks of flats, houses, hospitals, workhouses, almshouses, orphanages, institutions for the blind, crematoria, etc. etc. A number of them ran their own tram and bus services.

Some towns had a special *charter*, which exempted them from subordination to the district authorities. They were directly responsible to the provincial government, and their status was something like that of the English county boroughs. There were only seven such towns in Czechoslovakia, including Prague the capital. Compared with Great Britain, this was rather a small number even if we take into account the fact that the population of Czechoslovakia amounted to one-third of that of the British Isles and that it was more evenly distributed between the town and the country than in Great Britain. In our opinion the central government might have been more generous in granting such special Charters. On the other hand, however, we must note that the general powers granted to an average Czechoslovak commune and the practical

<sup>1</sup> Page 170.

use made of them were wider than those of the average English parish. They resembled those of the Swiss *Gemeinde*.

*Financial Self-Administration.*

We must now conclude our survey of Czechoslovak local government by devoting a few words to the all important problem of local finances. For any amount of self-government is fruitless if there are not enough financial means to pursue its aims, or if the attempt to make use of them is inhibited by undue interference from above. As the direction of communal, district and provincial economy is fundamentally determined in Czechoslovakia by the same leading principles, it will be appropriate to deal with the problem as a whole.

The financial resources of self-governing bodies were similar to those from which local government bodies in Britain and elsewhere derive their revenue, i.e.

- (a) income from its own property,
- (b) rates,
- (c) a share in the taxes collected by the central government,
- (d) grants from other central government funds.

Local councils enjoyed considerable freedom in deciding what rates were to be collected and which extras should be added to central government taxes for the benefit of local finances. To make the matter clearer a few words must be said here on the working of the system. Under the Czechoslovak Public Finances Acts, the self-governing bodies, provincial, district and communal, were empowered to determine what amounts of local taxation should be added to the taxes collected for the central government. Only minima and maxima were fixed by law and within these limits the self-governing bodies had a free hand. And as matters stood, the local extras greatly exceeded the central government taxes. All these taxes, central and local, were collected by the respective local agencies of the Ministry of Finance and the amounts due to local bodies were then handed over to them.

This system of financial self-government worked quite well and on the whole local finances were well managed. Abuses were effectively checked, and a healthy balance maintained. Local government bodies were allowed a fair amount of liberty both in acquiring and in using their financial resources. At the same time, however, they were not given so much freedom as to make harmful manifestations possible. By various devices the self-governing bodies were induced to observe a reasonable measure of equilibrium in their administration. Unnecessary squandering was prevented and extravagance frowned upon, while on the other hand

parsimony and neglect of public obligations were avoided. Provision was also made for larger allotments from State funds to be made to those regions which, after having used up all their local financial resources, were in real need of further assistance. All this made for a marked equilibrium in the social services of individual communes, districts and provinces. In this way some of the disadvantages attached to British local government<sup>1</sup> were notably avoided.

*The Citizens and the Bureaucracy in Local Government.*

It is in the mutual co-operation of the bureaucratic and lay elements that we must seek for the explanation of the fact that Czechoslovak local government really achieved a considerable success in spite of the undeniable fact that in its higher units, the districts and provinces, there was not enough scope for lay participation.

The average Czechoslovak was genuinely interested in his local government and the public administration of his affairs. To be a member of the communal council, or to become mayor of his township, or be a member of the district or provincial Diet, was an honour; and there was never a lack of candidates for these posts, though they meant nothing but toil and sweat. I myself remember vividly the keen competition for local councillorships when candidates were selected in our local party organization. Those who obtained such positions generally performed their functions with great devotion and zeal. Many of them even eagerly sought re-election after holding positions for many years. Many British writers in recent times have asserted that interest in local administration has declined in Great Britain.<sup>2</sup> This was certainly not the case in Czechoslovakia.

The central government and their provincial and district agents used their powers with moderation, and on the whole without undue interference. Czechoslovak officials worked very well, and proved efficient, solid and incorruptible administrators, though now and again incivility was met with and complained of. In their local party organization, whose members, owing to the pervasive proportional representation system, were invariably sitting on the local councils, citizens had first-hand protection against possible abuses. If need be they could have recourse to the Supreme Administrative Court. Although many people wanted the lay elements to have a larger share in the provincial and district administration there was no *acute* demand by the masses of the people for a greater

<sup>1</sup> Cf. for instance *The Future of Local Government*, official publication in the Labour Party's Post-War Policy Series.

<sup>2</sup> Cf. Jennings, op. cit., pp. 88, 102-3; Marriott, *The Mechanism of the Modern State*, II, p. 276; for the same phenomenon in Scotland see for instance W. H. Marwick, *Scottish Local Government*, p. 16.

measure of lay administration. For they realized the danger which would be associated with greater decentralization in view of German separatism.

*Summary.*

The main features, both positive and negative, of pre-1938 Czechoslovak local government are as follows:

- (1) The Constitution had a centralizing tendency, but it afforded a sufficiently broad framework for local self-government.
- (2) *Communal* self-government was given the widest possible scope and could compare favourably with the best communal administrations in the world.
- (3) The provincial and district self-governments had ample freedom to manage their own economy and enjoyed a fair amount of independence in their finances. But in administration proper the agencies of the central government had the upper hand. The fact that one-third of the members of provincial and district Diets were appointed by the central government still further limited the scope of local self-government.
- (4) The officials of the central government and of its local agencies fully respected local self-government and carried out their duties in this spirit.
- (5) The citizens took a keen interest in self-government, and the lay members of the local administration performed their functions with zeal and self-sacrifice.
- (6) The provincial self-government was protected against excessive encroachment on the part of the central government by its right to appeal to the Supreme Administrative Court.
- (7) The individual citizen enjoyed full legal protection in the Supreme Administrative Court against both State and local government bodies; moreover he was protected politically through the representatives of his political party in the local councils.
- (8) The chief obstacle to wider decentralization was the doubtful loyalty of the "Sudeten" Germans with their separatist tendencies.

*Local Government in the Liberated Territory.*

While this chapter was being written an event has occurred which is bound to affect the whole future of Czechoslovak local government. On the motion of the Czechoslovak Cabinet the President of Czechoslovakia issued on 4 December, 1944, a constitutional Decree on provisional legislation and public administration in liberated territory. This Decree puts the whole of local administration in the provinces, districts and communes in the hands of lay organs elected by the people, and thus with

one stroke establishes the fullest conceivable measure of self-government throughout the whole administrative structure of the Republic. Although it is only intended for a transitional period, leaving the final settlement to Parliament when it has been constitutionally elected, the measure unmistakably marks a new era in Czechoslovak local government.

Though, as we have just seen, local government in the pre-Munich Republic was by no means so bad as the various denigrations, circulated about it abroad, might have suggested, the Czechoslovak Government in London has long been fully alive to the fact that a simple return to the conditions of 1938 would be inadequate. "War never leaves a nation where it found it," said Burke. This holds good in the present war perhaps more than in others. New popular tendencies and new and radical developments in people's minds and aspirations, require new forms. This was a people's war and the liberated peoples everywhere will claim a bigger share in the administration of their own affairs. Events in France, Belgium, Greece and Yugoslavia after their liberation bear telling witness to this fact.

This popular tendency finds its foremost application in that branch of administration which is most within the people's reach: that of local government. The Czechoslovak Cabinet, in closest contact with the Czech and Slovak underground movements throughout the whole course of the war, anticipating the wishes of the Czechoslovak people, issued as early as April 1944 a formal declaration, urging the people to form national committees which would take over local administration in liberated territory, and laying down the main principles for their guidance. Local committees were to be set up in the villages and townships, district committees in administrative districts, and provincial committees in the provinces. The number of their members was not to exceed the membership of the respective self-governing bodies in pre-Munich times, and they were to be reliable and irreproachable citizens, representative of all social classes and all patriotic political movements. The committees were asked to take over and discharge the local administration until the normal organs of administration had been established. In particular, they had to deal with law and order, to ensure the safety of public property, to suspend disloyal elements from office, to secure war criminals and enemies of the Republic, and to provide sufficient industrial and agricultural production to supply the needs of the population. They were to abide by the laws of the Republic and directions issued by the President and the Government. Finally, the declaration promised that a presidential Decree would be issued in due course to regulate the organization and competence of the national committees.

Indeed, when the Slovak uprising of September 1944 succeeded in

freeing a considerable portion of Slovakia, national committees were established throughout the liberated territories, which took over the local administration under the instructions of the central Slovak National Council. And with the gradual Soviet penetration into Slovakia national committees again began to arise in the liberated towns and villages and readily took the local government into their hands.

All these committees are, of course, only provisional. They are arising spontaneously, on the spur of the moment, as a result of popular revolutionary action. As soon as elections can be held they will be superseded by new national committees set up in accordance with the above-mentioned Decree of 4 December, which will then become regular organs of local administration until the National Assembly has reached a decision regarding the final shape of local government in the country.

In the introduction to this section, we characterized the Decree of 4 December as a bold and far-reaching administrative innovation. And indeed that is what it is. Its few elementary provisions effect a radical change in the whole administrative machinery of the country. "In that territory of the Czechoslovak Republic which becomes liberated from the enemy" it is laid down in Article One of the Decree, "there shall be elected national committees, local, district and provincial, as temporary organs of public administration in all its departments." What does this single sentence signify? Nothing less than that henceforth the whole of the local government in the communes, districts and provinces will be entrusted to local councils elected by the people. In one single stroke all the remnants of what we have called the double track of public administration are swept away. No more Governors appointed by the central government, no more encroachment of district and provincial offices on the sphere of local self-government. Within the framework of valid laws not only the communes, but districts and provinces as well, will be able to run their local administration as they think fit.

The implications of this innovation are clear enough. The former dualism of local self-governing bodies and local agents of the central government is abolished. And so is the unhappy rule which gave the central government the right to nominate one-third of the members of provincial and district Diets. The administration of provinces, districts and communes is henceforth placed entirely in the hands of elected representatives of the local population.

This fully meets the wishes and expectations of the Czechoslovak people. It further enhances the quality of Czechoslovak democracy. It is also fully in line with the political ideals of its present leader, Dr. Edward Beneš, who from the outset of his political career has committed himself to the principle of full self-government. The unanimous approval which

this bold step has received in all Czechoslovak political circles from Left to Right as well as in the Czechoslovak State Council affords a very good omen for the future. And it is symptomatic indeed that such a decision should have been reached in Britain, a country in which local government enjoys such a splendid reputation; and where, as Ashley has observed, central government is the child of local government.<sup>1</sup> Now that the danger of separatism has been averted, Czechoslovakia with her new scheme of popular local self-government will be able to claim a place among the world's most advanced exponents of local self-government.

Besides administration proper the Decree entrusts to the national committees another power of crucial importance for the future of the country. They are to elect the Provincial National Assembly. This will act as a provisional Legislature to whom the Cabinet will be responsible. Desiring the creation of a Legislature with the least possible delay after liberation has been achieved, the President has thus transferred the power to elect this provisional legislative body from the people to the committees, for there is no doubt that it would take much longer to prepare the country for a direct general election. However, the Decree leaves open the question as to which of the three types of national committees will be called upon as electors. This and other problems are to be settled by a special Decree.

<sup>1</sup> Cf. his *Local Government*.

## CHAPTER VII

### CIVIC RIGHTS AND THEIR PROTECTION

#### *Human and Political Rights.*

INSPIRED by the ideals embodied in the 18th century American constitutions and in the declarations of the rights of man proclaimed in the French Revolution, the authors of the Czechoslovak Constitution set forth the fundamental rights and obligations of Czechoslovak citizens in its Fifth Chapter. They adhered closely to their western models, according no privileges on account of sex, birth or occupation; ensuring equality before the law without regard to origin, nationality, language, race or religion, and guaranteeing personal freedom and freedom of property. The citizen was also guaranteed freedom to exercise any calling and to acquire real and movable property, the right to settle in any part of the country and the right to emigrate abroad, within the limits of the law. Private ownership, which may be restricted only by law, was safeguarded within legal limits. Taxation and public levies could only be imposed by law; punishments and fines had to be prescribed and imposed only by law; the citizens enjoyed inviolability of domestic rights; freedom of the press, as also the right of free assembly and association; the right of free association to safeguard and ameliorate conditions of employment and economic conditions; the right of petition, postal secrecy, liberty for instruction and teaching, the free expression of opinion and scientific research; freedom of conscience and religion, and special protection for marriage, motherhood and the family; the Constitution also imposed the obligation to undergo military training and to obey the summons when called upon for the defence of the State. This is a list of rights and obligations common to most modern democratic constitutions the whole world over—though, of course, there are differences in detail.

Here, the fathers of the 1920 Constitution marched along the path trodden by the progressive liberalism of Western Europe and North America. In its political and ideological content the Constitution is perhaps nearest to that French individualistic republican liberalism so admired by the Czechoslovak Constituent Assembly, and which was looked upon at the time as the most developed system of republican parliamentary democracy.

#### *Minority Rights.*

The 1920 Constitution fulfilled to the letter an obligation placed upon the Republic by the minority Treaty of Saint-Germain. In its Sixth Chap-

ter it guarantees the protection of national, religious and racial minorities. It establishes full equality for all citizens of the Republic before the law and in the exercise of civic and political rights, an equal right to enter the public services and other offices, equality in promotion and equal access to all trades and professions. National minorities were free to use their own language in private and business intercourse, in the press, in publications and in public assemblies as well as in matters pertaining to religion, and in all institutions. If they represented a fair proportion of the population in the district they were entitled to State-supported schools where teaching was to be in their own language, and were guaranteed a proportionate share of public funds for educational, religious and charitable purposes. There was a ban on forcible denationalization. In any district where a minority totalled at least 20 per cent of the population they were entitled to use their own language in their dealings with public authorities.

#### *Economic and Social Rights.*

Western political tradition also found expression in the constitutional safeguarding of *economic and social rights*. These are merely hinted at in the 1920 Constitution. Faithful to their western models and having other urgent problems on their minds, the framers of the Constitution did not attempt to cut through the tangle of complex economic and social questions but left them for the deliberations of future legislators.

The Constitution safeguards private ownership, which may be restricted only by law. Expropriation is possible only on a statutory basis and compensation is to be given unless the statute expressly lays down that it is not payable. It can therefore be seen that private property in Czechoslovakia is placed under the protection of Parliament, which alone is entitled to agree to its expropriation where necessary, and alone can lay down the conditions as to how this should be carried out. Although the Constitution gives Parliament the last word in matters of private ownership, it leaves no doubt that the whole Czechoslovak economic order is based upon private capital and private enterprise. Here again we can trace the influence of western European liberalism.

All Czechoslovak citizens have the right to acquire real property and to carry on any calling for the purpose of gain within the limits of the law. They are guaranteed the right of association in order to secure better terms of employment and working conditions, and it is specifically stated in the Constitution that no one shall suffer in the sphere of his work for expressing his opinion.

These safeguards in economic and social matters must of course be considered inadequate. Economic and social rights are an increasingly important factor in modern democracy. Any Constitution that overlooks

them, as do almost all existing Constitutions, is bound to be defective. All outstanding students of political institutions and of economics whether of the Left or Right, are agreed today that one of the most serious defects of modern democracies is their neglect of social questions. Up to the present war unemployment has remained an unsolved problem; incomes have not been fairly divided, enormous profits have been piled up without check; poverty has been widespread, a tolerable living standard for all is still a *desideratum*. Modern capitalism and industrialism have provided fertile soil for social conflicts. All this has certainly constituted one of the most fundamental causes of the success of totalitarianism and the failure of democracy. "Present-day bourgeois democracy," observes Dr. Beneš,<sup>1</sup> "has lacked the courage and capacity to resolve the chief social problems in a more thoroughgoing and systematic fashion and to intervene in the economic structure of modern society as vigorously as is demanded by the nature of the State and society of the beginning of the twentieth century."

As in other countries with written Constitutions, ordinary legislation endeavoured with varying, but considerable success to make good the shortcomings of the Constitution. Legislation made possible the expropriation of land property in the public interests, such as the splitting up of the large estates after the First World War, and in recent times, the acquisition of land for fortifications, aerodromes, communications, etc. It provided for the fixing of working conditions and terms of employment, working hours, holidays, obligations resulting from collective labour agreements, the appointment of factory committees in industrial works, etc. It introduced vast schemes of social insurance to cover sickness, accidents, pregnancy, superannuation, disablement, old age and unemployment. Thus ordinary legislation intervened where the Constitution was found to be inadequate.

#### *The Protection of Civic Rights.*

#### *The Czechoslovak Supreme Administrative Court.*

As in the western democracies, the practical protection of the constitutional rights of the individual rests with Parliament and other lay representative bodies. There is also a right of appeal to a higher administrative authority. In private law relationships the citizen enjoys full protection in independent civil courts of general and special jurisdiction. Incidentally, for two reasons this protection is much cheaper than in Britain. On the one hand, legal fees and expenses are lower in Czechoslovakia. On the other hand, the system of jurisdiction is more decentralized and most cases can be settled by the district, regional or provincial courts of law.

<sup>1</sup> *Democracy Today and Tomorrow*, final chapter of the Czech edition, p. 201.

Further, as in other democratic States, public opinion safeguards the individual by the various means available in every true democracy.

We need not dwell upon the safeguards which we have just mentioned, as they are similar to those enjoyed by the citizens of other democracies, and present no feature of particular interest. There is, however, one outstanding aspect of Czechoslovak democracy which we cannot afford to pass over in a study dealing with its fundamentals and its practical working. I refer to the Czechoslovak Supreme Administrative Court.

This famous Bench of Administrative Jurisdiction dates from 1867 and was formed when Czechoslovakia was still part of Austria-Hungary. It came into being at a time when the idea of constitutional rule was successfully finding a path for itself through the obstacles presented by absolutism, and when on the ruins of the police State the rule of law was beginning to become a reality for the first time in Central Europe. The Court is indeed the child of the struggle of the Central European peoples against a despotic government and represents the triumph of law over despotism. This high tradition is no doubt one of the main sources of the Court's prestige and authority.

When Czechoslovakia was born in 1918 one of her first acts was to set up a Supreme Administrative Court in Prague. The scope of its predecessor's authority was extended. A revision of its statutes in 1937 brought with it a further improvement and in its final form it is one of the best national tribunals of its kind in the world.

The Court consists of several benches, each composed of one President and four judges. Less difficult cases can be decided by a smaller bench of one President and two judges. All the members of the Court are appointed by the President of the Republic on the proposal of the Cabinet. They are invariably chosen from amongst leading experts in the various branches of constitutional and administrative law, on the advice of the First President of the Court.

All the Court's judges are appointed for life and can be deprived of their offices only by a decision of the disciplinary senate of the Court itself. They can only be dismissed for neglect of duty or a breach of discipline. They are entirely independent, being bound only by statute and customary law. They have the power to examine the validity of governmental decrees, which correspond to British Orders in Council. Thus they are in exactly the same position as judges of the highest courts of common law. Their rank and pay are equal to those enjoyed by judges of the Czechoslovak Supreme Court, which is the highest organ of civil and criminal jurisdiction in the Republic and which corresponds to the Judicial Committee of the House of Lords.

It is a Court of Appeal against all administrative authorities. Its com-

petence extends to cases in which a person asserts that his rights have been violated by an unlawful decision or any measure made by any administrative authority. Furthermore, appeal can here be made against the violation of citizens' political rights guaranteed by the Constitution. The appeal may of course be brought before the Court only as a last resort when all other legal expedients open to the plaintiff have been tried. The authorities whose decisions can be reversed by the Court include all the organs of the central and local administration, all the Ministries and even the Head of the State.

When the Court finds that an appeal is justified, it nullifies the ruling of the administrative body, which is then bound to revise its decision on the lines laid down by the Court. The Court itself cannot give a new ruling in place of one which has been nullified. In this sense its function corresponds to that of the French "Cour de cassation." Needless to say, the binding force of the Court's judgment extends only to the *ratio decidendi* and not to *obiter dicta*.

If the appellant is likely to suffer irreparable damage by the immediate execution of a ruling against which he is appealing, the Court can stay execution pending the proceedings, unless the public interest requires that the ruling should be carried out at once.

An innovation of far-reaching importance was introduced by the 1937 reforms. Until then rulings of the Supreme Administrative Court were binding only for the case in question. Any further case of a similar kind was dealt with on its own merits; the authorities were not bound to follow the precedent. In practice, of course, precedents set by the rulings of the Court were usually followed. The rulings were regularly published in voluminous epitomes of leading cases, which became an invaluable source of reference for all subsequent cases of a like nature. But although civil servants referred to these publications they were not *obliged* to do so.

Here the reform of 1937 intervened: If the Supreme Administrative Court forms the same opinion twice, and if their opinion is at variance with that of the administration, the First President of the Court is entitled to lay the matter before an enlarged senate of the Court, composed of a President and eight judges. If the ruling of the Court is upheld, their legal opinion is published in the Official Gazette and thereafter becomes binding upon the whole State administration and on the Court itself, until such a time as it may be reversed by a larger *quorum*. Further enactments of the Supreme Administrative Court Reform Act, 1937, empower the Cabinet to ask the Court for a fresh ruling on any matter which they consider to have been wrongfully decided by the Court. If the Court adheres to its former decision, however, its opinion prevails and becomes binding on the whole administration, including the Cabinet.

The principle *stare decisis*, the binding force of the legal precedent, is natural to English case law, and may seem perfectly ordinary in this country. But nothing of the kind existed in Czechoslovakia, even in the courts of civil jurisdiction. The introduction of this principle into the procedure of administrative law was thus a novel feature. The brilliant example set by British respect for precedent has no doubt had noteworthy influence here.

One other important function is fulfilled by the Supreme Administrative Court. It is called upon to settle conflicts of competence between ministries and the provincial self-governments, thus fulfilling another very important task in achieving the democratic rule of law.

On an average the Supreme Administrative Court dealt with some 6,000 cases in a single year. Public administration and finance are covered in all their aspects and a complete description of its activities would involve a survey of the whole of Czechoslovak administrative law.

The Court's *impartiality* was above suspicion, as was appreciated by lawyers and laymen alike. In 7,803 out of the 28,947 cases dealt with by the Court in 1931-35 the administration's decisions were quashed in favour of individual citizens.

The quality of its work is beyond reproach. Its pronouncements are both elaborate and exhaustive. Published in the excellent collection of leading cases referred to above, they became a practical handbook of administrative and financial law. The Court's *rationes decidendi* and its *obiter dicta* exercised a wholesome influence on the Civil Service and helped to ensure their accurate observance of the canons of public law.

For national minorities the Court was a reliable and impartial body open to Czechoslovak citizens of any race who thought their rights had been curtailed by the State administration. The Court used every language spoken in the Republic: Czech and Slovak, German, Hungarian, Ruthenian and Polish.

Appeal to the Court is comparatively cheap. It is true the appeal has to be countersigned by a barrister, but the expenses of procedure are very low. The first sheet of the appeal has to be stamped at a cost of less than nine shillings; the first sheet of the reply to the appeal and of any further replies costs half-a-crown. Additional appeals cost one shilling and sixpence, while all accompanying documents have to bear a threepenny stamp.

Against all the obvious merits of the Supreme Administrative Court and its work, there are two defects which still seem to need a remedy. The Court has the right to require any individual appellant to defray the costs of his case should he be the loser. If, on the other hand, the appellant should win against the administration, the Court can require the adminis-

tration to pay the appellant's expenses only if it has repeated an act already declared illegal by the Court, or if the authority's decision contravened the law of precedent as laid down by the Court.

The other defect is that the machinery of the Supreme Administrative Court operated very slowly. Though the Court worked very hard, it simply could not cope with the vast number of cases, many of which were highly complicated. The 1937 Act gave the Court a number of assistant judges and simplified its procedure in minor cases. But what was really needed was some sort of decentralization. This had been attempted as early as 1920 when an Act was passed providing that lower administrative tribunals should sit in districts and provinces. The district tribunals were to be composed of one civil servant and two laymen, while the bench of the provincial tribunals was to be made up of two civil servants and three laymen. This Act never came into force, which I consider very fortunate, for not only did it threaten to upset the uniformity of jurisdiction, but by setting up officials as *ad hoc* judges and by having benches with a lay majority, it endangered the whole conception of administrative justice. To entrust the management of local affairs to the elected representatives of the people is one of the essentials of democracy. It is quite another matter to entrust to laymen the task of deciding what is or is not law. Purely judicial matters can only be settled by expert judges if the law is to be properly applied.

After this war there is a good chance that the two defects referred to may be eliminated. Whichever side loses its case in Court ought to pay the successful party's reasonable expenses. Secondly, a lower administrative Court, composed of professional judges, should be established for each of the four provinces. From such a Court an appeal could lie in important cases to the Supreme Administrative Court. This would still further lessen the cost of appeal for the ordinary citizen, and would meet the present demand for decentralization quite adequately.

## CHAPTER VIII

### THE CIVIL SERVICE

THE Civil Service can well be compared to the nervous and muscular system of the human body. Just as the nerves receive instructions from the brain and pass them on to the muscles for execution, so the Civil Service receives orders from the Cabinet and carries them out, wherever action is needed. In the same way as the nerves receive a vast mass of impressions from all parts of the body for the brain to digest, so do the branching tentacles of the Civil Service forward to the central government an endless succession of concrete observations derived from daily executive practice. These first-hand impressions serve as a basis for the decisions made by those in authority. Without a well-developed Civil Service a modern State would be like a firm whose management lacks engineers, accountants and skilled workers. Therefore, in a study of Czechoslovak democracy at work we must not omit a brief reference to the organization of the Czechoslovak Civil Service, and its merits and deficiencies.

#### *Its Origins.*

The origins of the Czechoslovak Civil Service go back to Austria-Hungary's rule when the Czech Lands enjoyed a certain measure of autonomy. This meant the employment of a number of public officers of all grades. The local branches of the Austrian Civil Service in Bohemia and Moravia also employed a limited number of Czechs. Finally, a few Czech civil servants worked at the headquarters of the central administration in Vienna. When Czechoslovak independence was declared in 1918, these people formed the nucleus of the Czechoslovak Civil Service.

Their employment in the new Republic brought with it both advantages and drawbacks. They provided the new State with a ready-made body of trained administrators with years of practical experience of administration behind them, which contributed to the smooth working of the executive machine at the important juncture of the switch-over. At the same time, however, the Czechoslovak Civil Service was pervaded with a stale atmosphere of bureaucratic routine which brought with it some of the notorious off-handedness so characteristic of the Austrian, and, to an even greater degree, of the Hungarian Civil Service.

The fact that all Austrian laws not in conflict with the new Constitution remained valid under the Republic meant that the Austrian Civil

Service Code of 1914 remained in force. Odd though it may seem, this Code was a good piece of work, and with a few minor alterations it has remained the basis of Civil Service status under the Czechoslovak Republic.

### *The Bureaucratic Hold on Public Life.*

If we wish to assess correctly the proper place of the Civil Service in the Czechoslovak system of parliamentary democracy, we must bear in mind that it had a wider field of activity than its British counterpart. It was not restricted to a central Executive with a small number of local branches, but covered provincial and district government as well. In a few instances it even took over certain municipal responsibilities such as organizing and maintaining the local police force. Moreover, a great many more public utilities were run by the State than is the case in Great Britain or America. Because of this the Civil Service penetrated deeply into the life of the national community and became a powerful factor in the Republic.

A few statistics will enable us to see the difference between the British and Czechoslovak Civil Services, though figures alone do not give an accurate picture of the situation. Before the war there were 290,000 established civil servants in Great Britain. If we include those employed in State industries the total, according to Professor Laski, will be something like 500,000. In 1936 Czechoslovakia employed over 321,000 persons in the State service. This figure includes university teachers, school teachers and judges. When we realize that Czechoslovakia with 15,000,000 inhabitants has one-third the population of Great Britain, we can see how much more completely the peoples of Czechoslovakia lived under the rule of "bureaucracy" than do the people of Britain. This same difference is all the more striking when we consider that both countries have proportionally the number of civil servants *proper* (down to the sub-clerical class). Czechoslovakia with 15,000,000 inhabitants had 40,000 civil servants in these four classes, while Great Britain with a population three times as great had 125,000 before the war. It can therefore be seen that in Czechoslovakia a far bigger proportion of State employees was engaged in work other than civil administration proper than was the case in Britain.

### *Classification.*

The Czechoslovak Civil Service is divided into four classes, which correspond to the four main classes of the British Civil Service: administrative, executive, clerical and sub-clerical. This fourfold division is based on educational standards. Candidates for entrance into the administrative

class must have taken a University degree (which implies no less than four years attendance at a University or a Polytechnic School of university status). Those wishing to join the executive class have to be in possession of a Secondary School Leaving Certificate, known as a "Maturity Diploma," which means that they have had a full-time course of higher education up to the age of 18 or 19. Clerical candidates must have put in a full-time attendance of at least two years at a higher grade school, commercial college or the like, and have reached the required standard, while for the sub-clerical class anyone was eligible who had had a complete and satisfactory elementary education up to the age of 15. In practice, however, owing to the lack of vacancies in the higher classes of the Service, many candidates entered the sub-clerical class although their qualifications were higher than the minimum required.

These standards of education are laid down by statute as the requisite minimum for each class of the Service. They were rigorously adhered to, and the few exceptions which did occur were mostly during the early years of the Republic. There was no inter-class promotion and it was only by obtaining the necessary qualifications that a civil servant could cherish a faint hope of promotion to a higher class, where as a matter of course he would have to start from the bottom.

This rigid system tended to thwart the ambitions of lower ranks in the Service and offered no chance whatever to talented self-made men of the clerical and executive classes. Such people could not hope to get anywhere near the top. Yet in spite of this defect, which was a serious handicap to the efficiency of the Service, we should give the system its due. We have seen what a powerful hold the political parties had on the public life in Czechoslovakia. Their influence on the Civil Service, of which we shall have more to say, was largely negatived by the rigidity of the Civil Service system. They could not play as much havoc with the system of promotion as they would most certainly have done had they not been checked by these inflexible rules.

#### *Recruitment.*

The logical result of the system was that the School Leaving Certificate played the most important part in recruitment for the Civil Service. Without a university degree there could be no admission to the Administrative Class. Unless the candidate could present his Secondary School Leaving Certificate, he could not be accepted for the executive class; and so on. Whatever his knowledge may have been, he could only enter on the strength of his certificates. But this is also all that a candidate needed (in addition to a good personal or political reference) to get into the Service. There were no entrance examinations except for some clerical

and sub-clerical grades. It was an odd system indeed. An applicant for the post of typist was often liable to be examined before being appointed. Yet a candidate for the highest class, the administrative class, was allowed to slip in without being examined at all. Apart from a medical examination, he had only to face a short interview with an officer of the staff department in question.

This was a serious defect in the Czechoslovak methods of recruitment, as it left the door ajar for partisan patronage and handicapped the capable in favour of protégés. The worst effects were countered, of course, by the fact that no person could get into the Service, and into its particular class, without first obtaining his or her School Certificate. Its absence could not be made good by any amount of patronage, however powerful. But departments could choose freely from the many thousands of eligible men and women in possession of a School Certificate and since no check was provided by competitive entrance examinations, an opportunity for the abuse of patronage certainly did exist.

It must be said at once, however, that the system of recruitment worked fairly well in spite of its defects. In fact, one might say it worked surprisingly well, and for two good reasons. First, because the standard of education was very high, especially at the Universities. Anyone able to put in five years of elementary education, eight years of thorough-going secondary education and then a hard four-year University honours course could reasonably be expected to do well enough in public service. Secondly, no department could afford to be too one-sided in choosing its servants. Though the Minister temporarily in charge might have preferred a candidate of his own party, he was bound to allot a due proportion of the vacancies to candidates supported by other parties, especially those of the Government Coalition. Otherwise, he would have been strongly criticized, and such criticism was a constant steady factor. Its effect was like that of a governor which automatically maintained partisanship at a tolerable pressure.

Thus, picking up its men in a haphazard fashion, according to the wishes of various patrons, from a vast reservoir of qualified people, the system did provide the Service with good administrators, and selected comparatively few failures. But it seldom got *the* best men for the job.

A British reader will realize why no regular competitive examination system was ever introduced. He is aware that in his own country it took decades of development and hard fighting against those who stood to lose by its abolition to supersede appointment by patronage, and that it was not till Gladstone's day that competitive examination became "the central highway of entrance"<sup>1</sup> to the ranks of the British Civil Service. It

<sup>1</sup> Professor Laski's words, from his *Parliamentary Government*.

is not therefore surprising that the 20 years of the Republic's existence were all too short a time to introduce the same system. Far too many, including the political party leaders, stood to lose by the change, and any innovation that ran counter to the tastes of the political parties was difficult to carry through.

One other factor hostile to the competitive examination as an *exclusive* method of recruitment for the Civil Service must also be adduced. Czechs were not the only candidates. Slovaks, Ruthenians, Germans and Hungarians, all wanted their proportional share in the ranks of the Service. Yet the Slovaks, as we have already said, suffered from a lack of fully qualified candidates. Other nationalities of the State, again, had difficulty in presenting a sufficient number of candidates with an adequate knowledge of Czech or Slovak which were the official languages of the country, and such knowledge was an indispensable qualification, especially in the administrative class. Competitive examination under these circumstances would have been denounced as an act of discrimination in favour of the Czechs.

One last point ought to be mentioned under this heading. The administrative class, the real heads of the Service, was recruited almost exclusively from amongst the graduates of the Faculties of Law and political sciences. These Faculties left their students no choice of subjects and consequently were turning out a uniform type of graduate. This had its advantages and disadvantages. It meant that the administrative class was supplied with recruits with a similar educational background; all had the same horizon of knowledge but also of course the same gaps therein. They were a homogeneous element, which could easily be assimilated. This was very convenient for their training in the Service, which was very well organized, and contributed largely to its stability. Backed by their legal training, entrants developed a detached impartial "judicial mind."

On the other hand, however, it meant that the Service became rather narrow and monotonously uniform. It became too legalistic. Formality, legal argument, and routine sometimes tended to oust common sense and expediency, while devotion to precedent tended to kill initiative. A Czechoslovak law student not only had to master economics, administrative and constitutional law, public finance and local government, which are all subjects useful to an administrator, but also to devote time to Roman law, and civil and criminal law as well. The latter subjects had to be studied in considerable detail, and were an obvious waste of time for a would-be civil servant, who would find modern history, sociology, psychology and political theory and organization far more useful.

The need for reform in the preparatory studies of Civil Service candi-

dates was fully realized in Czechoslovakia. Some years ago a great public controversy arose over the need for a thorough overhaul in the Faculties of Law and Political Sciences. Many favoured splitting the course after the first three terms into two distinct branches: one for lawyers, judges and barristers, the other for prospective civil servants, local government officials and all those wishing to join the administrative ranks of the public services. The latter would have concentrated upon constitutional and administrative law, local government and social law, economics, politics and public finances. Had this reform materialized, the main problems of preparatory tuition for the Civil Service would have been solved. Unfortunately, there was strong opposition by some of the University professors and the matter was dropped. The subject may be expected to come up again after the war.

### *Training.*

Before being established, all civil servants have to pass through a probationary period, which usually lasts three years. During this period they are supposed to acquire the practical knowledge they need for the efficient performance of their duties. Their training varies according to the department. Let us briefly describe the preparatory training received by a civil servant in the Czechoslovak Ministry of the Interior, which corresponds to the British Home Office.

A candidate applying for a post in the Civil Service does not start his official career in the Home Office. It is a well-established principle, prescribed by the Civil Service code, that no civil servant in Czechoslovakia can serve on the staff of any Ministry in Prague until he has spent five years in lower branches of the administration. Upon his entry into the Service, a Home Office candidate has first to serve in the provincial office. After the first year or so he is transferred to a district office where he has to spend a minimum of six months, before returning to his provincial office. In his first few months of service an older colleague would be appointed as his tutor. It is the tutor's duty to initiate the newcomer to all the ways of the service, guide him, supervise his work, and correct his drafts before they are sent for higher approval. Towards the end of his third year of probation the young man has to pass a rigorous Service examination, which is both oral and written. Only then can he obtain a permanent appointment in the Civil Service.

This system of probationary training worked very well indeed. It gave the young civil servant a thorough training in his own branch of the Civil Service and it compelled him to master his job both in theory and in practice. The examination was far from easy. Before being allowed to take up work in any department of the central government he had to

spend five years studying the practical work of local government in districts and provinces. Thus he could see how any decision he might be called upon to make at headquarters would appear to those who had to carry it out. In this way what was missed through the absence of an entrance examination was largely made good by this method of training and the probationary examination which completed it.

*Pay, Promotion and Legal Status.*

Civil Service salaries were very low in Czechoslovakia compared with the British. The highest pay was some £650 per annum. A candidate for the administrative class began at approximately £110 per annum, while a beginner in the sub-clerical class received a bare £60-70 per annum. The cost of living was of course much lower in Czechoslovakia than in Great Britain before 1938, but not lower to the extent that the salaries we have cited would suggest. Let us illustrate our comparison by the following example. For decent board and lodging, say a one-roomed flat with bathroom and kitchenette, one had to allow some £6-7 per month. Thus a young civil servant had only some £3-£3 10s. per month left at the beginning of his career. He would hardly have been able to support a wife from his pay without lowering his normal standard of living. Only after seven or eight years of service could he gradually begin to free himself from his financial worries.

In spite of these poor prospects the Czechoslovak Civil Service attracted quite a number of well-qualified people—a fact that will surprise the foreign reader. Several factors concurred in making it an attractive career despite the low pay. Security of tenure, a reason particularly valid in times of economic depression, a guaranteed pension, convenient working hours which left most of the afternoon free, the relative lightness of the duties in many posts of the Service as compared to private business, and a good position in the hierarchy of the community. Finally, a psychological factor also played an important part in the matter. Under Austro-Hungarian rule very few high positions in the Civil Service were accessible to Czechs and Slovaks. Hence the natural reaction under the Republic was to strive for these high offices, and to pluck the much coveted fruit which had hitherto been prohibited.

*Promotion* in the Service is based mainly on individual merit. Each Ministry and provincial office has its own Qualification Board to consider annual reports on each civil servant's conduct and work throughout the year. These Boards, each composed of five civil servants, make their decisions by vote. These are communicated to the officers who can appeal to a Central Qualification Board against an adverse report marking them as being below average fitness. The marks granted by the Qualification

Board are the deciding factor whenever a higher vacancy is to be filled although naturally personal likes and dislikes also played their part in determining promotion. Party influence invariably came into play if the post was an important one. On the whole, however, it was difficult to disregard merit as ascertained by the Boards, and cases of unfair promotion under partisan influence were rare.

Apart from promotion on merit there are regular increments on pay based on seniority. Even if he is not promoted to a higher rank of his class the civil servant has his salary raised every three years. Exceptions are made only in cases of serious breaches of discipline or for reasons of inefficiency, i.e. if the employee has been found below average fitness by the Qualification Board.

A civil servant enjoys absolute security. He can be dismissed only for gross misconduct and then only when the appropriate Disciplinary Board so decides. These Boards alone have the power to inflict disciplinary punishment on a civil servant found guilty of misconduct. He is therefore very well protected against any arbitrary behaviour on the part of his chief.

The civil servant and his family are fully insured against illness and incapacity. He is entitled to an old age pension, subsistence pay for his widow, and funeral expenses. He receives children's allowances (£1 per month for the first child, one third less for the second child, but nothing for any subsequent child).

The civil servant is not politically restricted. He can be a member of a political party and of a professional Union of his own choosing. He has, however, no right to strike, and he cannot become a member of any association the aims of which are incompatible with those of the Civil Service. He can be elected to local representative bodies as well as to either Chamber of Parliament. If elected he is given leave for the term of his parliamentary office, during which he retains his basic pay, and his right to triennial increments, but forfeits all his chances of promotion on merit. A Czechoslovak civil servant is not debarred from expressing his opinion on current political problems in writing. He is only required not to discuss the controversial problems of his own department in public. Here Czechoslovak practice differs sharply from British. It allows the civil servants more freedom, but at the same time exposes the Service still more to the influences of party politics.

#### *The Civil Servant and the Public.*

We dealt with this crucial question when we discussed Czechoslovak local government. Here, too, the Austrian legacy made adaptation more difficult than it might otherwise have been. The typical Austro-Hungarian

official, although a State employee, was far from being a "civil servant." In the first place he was not "civil" and though he was a servant of the Emperor and his own superiors, he was certainly not a servant of the general public. He was a domineering type, who often treated the public as a bullying sergeant-major might treat an awkward squad. The public reacted with open hostility. They hated officialdom as a whole, and made civil servants a target for abuse and ridicule. They thought most of them comic and incompetent of the type which Gogol immortalized in his famous "Government Inspector."

This mutual dislike could not be swept away at once when liberation came. "Sergeant-majordom" on one side and ridicule on the other were noticeable in Czechoslovakia, and complaints of incivility continued to crop up here and there. But these were only exceptions, mainly confined to manipulative servants. On the whole, civil servants in Czechoslovakia were as polite as they are elsewhere, and the relations between officials and the public improved steadily until in the last years of the pre-Munich Republic they could have been considered as smooth and correct.

#### *General Appreciation of the Czechoslovak Civil Service.*

In conclusion, we may say that the Civil Service was good and efficient. That is, as efficient as the multiple-party coalition Cabinet would allow. Though the method of selection and preparatory education might have been better, the Service on the whole succeeded in getting good people into its ranks, and even some excellent brains. Unattractive as the small salaries in the lower ranks were, the security of tenure and the high social position which it secured for entrants helped to swell the ranks of prospective candidates. The system of post-entry training, followed by a probationary examination, worked well. Political patronage in recruitment and promotion, and partisan influence throughout the Service were more marked than elsewhere, but permanence of tenure and the wide measure of autonomy accorded to the Service prevented it from degenerating into anything approaching the "spoils" system. And, as one party jealously watched the activities of the other, party politics in the Civil Service were effectively held in check.

The Service was sometimes criticized, as elsewhere, for its lack of initiative, its red tape, rigidity, slowness of procedure, over-emphasis on routine, hesitancy and avoidance of responsibility. But the Czechoslovak Civil Service was no worse in this respect than its British counterpart. I am inclined to think that it was more progressive and more adaptable to the new trends of life and modern technical needs than the Civil Services of most other countries. It had a high sense of honour, though a few bad instances of dire corruption did occur and received wide publicity.

“There is far greater interest displayed in an occasional instance of administrative pathology . . . than in the steady performance of tasks upon which a very large part of the public welfare depends.” These words of Professor Laski<sup>1</sup> apply as much to the Czechoslovak Civil Service as they do to the British.

<sup>1</sup> In his *Parliamentary Government*.

## CHAPTER IX

### CZECHOSLOVAK DEMOCRACY UNDER THE STRAIN OF THE WAR

FOR Czechoslovakia the war began with Munich. It might not have begun according to the orthodox rules of international law, but the decisions imposed there on her shook the internal structure of Czechoslovakia quite as violently as open warfare would have done, perhaps even more violently.

For Czechoslovak democracy, Munich was a fateful turning point. It was a blow to the existing constitutional order, which shattered its very foundations. Another blow in March 1939 sent the dazed and staggering Republic reeling into unconsciousness. With it the twenty-year-old edifice of Czechoslovak democracy collapsed. A grim, stark prison grew out of its ruins: the totalitarian order. But Czechoslovak democracy was not dead. Far from home, far from the clutches of the Nazis, a Government came into being in exile. The hospitable soil of Great Britain aided its growth. The minds and hearts of the subjugated Czechoslovak people, who have never lost faith in the ultimate victory of their ideals and in their Hussite national credo, "Truth Prevails" were its inspiration.

Three phases of Czechoslovak democracy date from Munich: the period of the "Second Republic" from September 1938 to the 15th March, 1939; the period of the Czech "Protectorate" and Slovak "Republic"; and finally the period when Czechoslovakia's organs of State functioned abroad.

#### I. THE "SECOND REPUBLIC"

For a short time after Munich the 1920 Constitution remained valid. Before long, however, amendments had to be made on the question of Slovak and Ruthenian autonomy, and both these provinces were endowed with their own governments and parliaments and a broad measure of administrative and legislative independence. This marked the end of the 1920 Constitution. Germany now began to exert great pressure and make demands which the Czechoslovak Government resisted as best it could. But the odds were too heavy and, to please the German master, a number of democratic liberties had to be suspended. On 23 December, 1938, a Decree was issued which drastically curtailed the freedom to form political parties. Henceforth they could only be established with the sanction of the Cabinet, which was free to decide as it liked, without

being compelled to give the reasons for its decision. This looked like a belated attempt to prevent political parties from multiplying, but the Decree was thoroughly undemocratic in principle, however desirable the end in view. The number of political parties was reduced to two, and their organization drastically revised. The Communist party was disbanded. The sittings of Parliament were suspended for a long period, the Permanent Parliamentary Committee functioning instead. Restrictive measures against Jews, which Germany insisted on, were being prepared.

The old parliamentary balance was lost. In the first post-Munich days the Germans enforced the resignation of the President, Dr. Edward Beneš, and the State was left without a legal head. Dr. Hácha, ex-President of the Supreme Administrative Court, an outstanding jurist, but a political nonentity, was then made President. Inexperienced in party politics, he became a tool in the hands of astute politicians, eager to snatch power for their own ends. The "figure-head" for which the late Švehla had asked became a reality. The extremists of the Right were free to act almost unchecked, and the better elements had to retreat to their innermost defensive positions. The parties of the Right, now united as one big party, dominated the Executive. In the Czech territories the Labour opposition did at least serve to check Right-wing excesses in some degree and succeeded in preventing totalitarianism. But in Slovakia the Government was rapidly overpowered by the separatist Catholic party which became totalitarian and tolerated no opposition whatsoever.

It would not, however, seem profitable to consider the post-Munich Republic further at this point. For it was only a mutilated fragment of the parliamentary system, awaiting the *coup de grâce* which it received six months later. I should, however, like to add one thing: when we remember the crippling effect of the Munich disaster on the whole existing economic and political framework, and the irresistible German pressure to which the complete apathy of the West at the time exposed the remnant of the State, the tremendous obstinacy with which democracy resisted the systematic onslaughts of totalitarianism in the mutilated and impoverished post-Munich Republic is a clear witness to its unyielding vitality and the deep roots which democratic principles had thrust down into the minds and souls of the Czechoslovak people.

## 2. THE CZECH "PROTECTORATE" AND THE SLOVAK "REPUBLIC"

Occupation by Germany and Hungary of the truncated Republic put a temporary end to democracy in Czechoslovakia. For a time democratic momentum persisted in the country's institutions. The Constitutional

Court, for instance, continued to exercise its function, and even to question the legality of the Permanent Parliamentary Committee's rulings in terms of the 1920 Constitution! As late as May 1939, two months after the German occupation, one such ruling was actually quashed! A dying echo of liberty due to a German oversight.

### 3. THE CZECHOSLOVAK GOVERNMENT ABROAD

When the Germans and Hungarians invaded Czechoslovakia in March 1939, Hácha's Government remained in the country. Hitler appointed Hácha "Staatspräsident" of the Protectorate of Bohemia-Moravia and made him responsible to himself. Hácha's Cabinet became the "Government" of the Protectorate. Only one member of this "Government" succeeded later on in escaping from the country. The post-Munich Czechoslovak rump Parliament automatically became *functus officio*. Many M.P.s were arrested and a few made their escape from the prison of the Protectorate into freedom. The Constitutional Court and the Supreme Administrative Court shyly continued their work in Prague, but kept quiet behind their old files and waited for their turn to come. Thus only one of the constitutional organs of the Republic remained free: Dr. Edward Beneš, Second President of the Czechoslovak Republic, whose resignation from the presidential office had been enforced by outside pressure and was therefore legally invalid. He became the obvious leader and focal centre of Czechoslovak democracy as reconstituted abroad.<sup>1</sup>

Though limited by his residence on foreign soil the President of the Republic was able to exercise the main functions laid down by the 1920 Constitution. As President of Czechoslovakia he received and appointed Ambassadors and Ministers; concluded international treaties; declared a state of war; assumed the supreme command of all the armed forces of the Republic; appointed State functionaries, including the Czechoslovak Prime Minister and Members of the Cabinet, and placed the administration in their hands. The Cabinet exercised all the functions with which it was legally invested by the Czechoslovak Constitution and other statutes. In this way it was possible to reconstitute the Czechoslovak Executive abroad in full accordance with the Constitution.

With the Legislature the case was different, however, for Parliament remained under the German occupation. Only a few M.P.s escaped to freedom and obviously no Parliament could be re-established abroad.

<sup>1</sup> On the recognition of Dr. Beneš and his Government by other States see present writer's book, *The Czechoslovak Cause in the Light of International Law*.

Since the Constitutional Court and the Supreme Administrative Court also remained in Prague, no constitutional and administrative judicature was available either. The control by political parties and by public opinion were for all practical purposes absent, and it is precisely these factors which are essential for democracy. Thus the great problem confronting President Beneš and his Cabinet in exile was how to make good under these exceptional circumstances the absence of these essential components of democratic rule.

The chief preoccupation of course was how to provide a substitute for Parliament and thereby bring the Executive under the political control of a representative body which would provide an adequate substitute for public opinion. Next came the issue of the judicial control of the administration, and finally its financial control. These questions were both important and delicate. The President and his Cabinet met them by setting up three organs: The State Council, the Juridical Council and the Supreme Audit.

#### *The State Council.*

The State Council was set up by a Presidential Decree on 23 July, 1940, as an advisory body and as an auxiliary organ of control. It was empowered to submit memoranda to the President or to his Government, to require members of the Cabinet to participate in its sessions, and to obtain information from them. In return, the State Council was required to report to the President of the Republic or to the Cabinet on matters laid before them. A Decree of 27 October, 1942, made it compulsory for the President to submit all draft-decrees to the State Council for consideration. The State Council was not a provisional parliament. It had no legislative authority, nor could it overthrow the Government by a vote of no confidence. Obviously such powers can only be exercised by a body elected by the people—an impossibility in exile. Though the few Czechoslovak M.P.s who had managed to escape had been popularly elected, the smallness of their numbers, and their fortuitous party affinities made them a body which could not even approximately represent the whole electorate.

Otherwise the State Council exerted a control which was very much like that exercised by a parliament. It was empowered to demand the presence of every member of the Cabinet at its sessions; could put questions to the ministers and demand due explanations of the conduct of the administration; it had ample authority to criticize the Cabinet and any of its members; it could pass resolutions expressing agreement or disagreement with the Government's policy in any matter; it could draw the President's attention to any shortcomings in the working of government machinery, and freely express its views on the draft decrees of the Presi-

dent.<sup>1</sup> Though the President and the Government were not bound to abide by the State Council's recommendations, they could hardly disregard the considered opinion of a body which included representatives of all the political trends of the country from Left to Right. Indeed, apart from a few minor points, the presidential Decrees were in fact adopted to meet the State Council's wishes.

Thus the State Council has developed much on the same lines as Parliament. As in Prague, committees formed from among its members prepared agenda for discussion in full session. Debates were conducted in much the same manner. The State Council controlled all departments of the State administration. It reported fully on the Government departments and drew the attention of the Cabinet and the President to points that needed remedying. The State Council exercised control over finance, carefully scrutinizing both the financial bills and the annual budget.

As we have said, all the main political trends were represented in the Council. Though the President's power to appoint members was unrestricted, he certainly tried to secure the fair representation of all parties. Social Democrats, Czechoslovak Socialists, Communists, Agrarians, Czech and Slovak Catholics were represented. Naturally, they did not sit as mandated representatives of their parties. Party differences, it was agreed, should be avoided during the struggle for liberation, and any new or simplified party grouping, which the people at home were evidently pressing for, could only be realized by popular elections in the homeland. This all-party complexion gave the State Council prestige and enhanced its political influence on the conduct of policy by the Cabinet. Moreover, the Council's *esprit de corps* was more developed than had been the case with the Prague Parliament.

The State Council thus continued that tradition of healthy political compromise which was the chief asset of Czechoslovak democracy at home. Left and Right, Communists, Socialists, Agrarians and Catholics worked together in enviable harmony, well agreed on the fundamentals of the policy to be followed during the war, and in general accord also on the main lines of policy, on all the essentials for the great work of reconstruction that will be needed after the liberation.

#### *The Juridical Council.*

The Juridical Council was a body of five members created by a special

<sup>1</sup> A decree of 15 October, 1940, issued by the President of the Republic on the unanimous motion of the Government, stipulates that as long as it is impossible to carry out the provisions of the 1920 Constitution concerning the legislative power, the President will be entitled to issue on the motion of the Cabinet decrees with statutory validity.

presidential act of 4 February, 1942. Its object was to preserve as fully as possible the legal character of the Czechoslovak State abroad. Its members were appointed by the President of the Republic, were fully independent, and acted only according to their own conscience. The chief function of the Council was of a judicial nature.<sup>1</sup> It had to decide whether the administrative decisions of the State authorities were covered by law or not. The opinion of the Council could be sought by the President of the Republic, the Supreme Audit, or any Czechoslovak citizen whose rights were affected by a decision of the administration. The Council's finding had to be delivered both to the applicant and to the public authority concerned.

The Juridical Council was set up as a substitute for an administrative judicature which could not function abroad. It had the main attributes of a regular administrative tribunal, though its findings were advisory and had no binding force. This is where the Juridical Council differed most substantially from the Supreme Administrative Court, and was the main weakness in its constitution. Though in theory this defect was very serious indeed, the matter must be considered from a purely *practical* standpoint. What, for instance, would have happened if the Juridical Council gave an opinion *against* the State administration? The plaintiff would then have been in possession of a document in which it was laid down in black and white by a special Czechoslovak organ instituted for the purpose by the President of the Republic, that a Czechoslovak public authority had made a decision which was in conflict with valid Czechoslovak law. It is inconceivable that the Czechoslovak office concerned would fail to alter its own decision even though it had certain objections to make.

From the juristic point of view the creation of an administrative *Court* would have been preferable, but there were weighty political arguments against this course. For it would not have been wise under the circumstances to entrust the power of deciding what is right and what is wrong to five individuals. In any case there were not a sufficient number of persons in Britain qualified for this work. None of the judges of the Czechoslovak Supreme Administrative Court succeeded in escaping from the Nazi occupation. Matters were made worse by the fact that no complete sets of statutes and other essential legal handbooks were available abroad. For these reasons it was wiser not to press the matter too far and to leave open the usual appeal to the Supreme Administrative Court in Prague after the liberation. This has been done and a presidential Decree of 3 August, 1944, provides the usual time limit allowed for such appeals to begin a year after the liberation of the country.

The Czechoslovak Government was the first, and, I think the only,

<sup>1</sup> See regarding this question for instance the present writer's article, "The Czechoslovak Juridical Council" in *Modern Law Review*, vol. vi, pp. 143 sq.

exiled government to set up a body with quasi-judicial powers in administrative matters. The fact that the Czechoslovak Government, even in the midst of this revolutionary and transitional period, should be so anxious to attain such a high degree of legal security by imposing upon itself such fundamental limitations, provides the clearest possible demonstration of the maturity and soundness of Czechoslovak democracy in its activities abroad.

The Council's achievements have fully justified its establishment. In the three years of its activity the Juridical Council has dealt with 85 cases, in only 16 of which administrative acts have been quashed on the grounds of incompatibility with Czechoslovak law. The public authorities were not legally bound to comply with its decisions; nevertheless in most cases they did and modified their action accordingly.

Besides its quasi-judicial activity, the Juridical Council was given power to help in the framing of laws. The Ministry of Justice or any other office of the central government had the right to request from the Juridical Council any legal opinion *de lege ferenda*. This imposed a further restriction on the government's powers. The control exercised by the State Council was of a political character, whereas that exercised by the Juridical Council was technical-legal. This participation of the Juridical Council in legislation was of course only facultative and the Government was free to draft decrees without its help. In practice, however, the Juridical Council's assistance was requested, whenever controversial or complicated points of law were involved, or bills needed an expert legal re-drafting.

#### *The Supreme Audit.*

As its title indicates, this organ is entrusted with the control of the State finances. It is also called upon to decide whether expenditure is legally justified and to this extent, it has some control over the Executive. It came into existence in the early days of the Republic. We abstained from dealing with this institution earlier, not through under-estimation of its value, but because such institutions are found in most countries and Czechoslovak practice exhibits no original features worthy of attention. It is mentioned in this chapter only to show how Czechoslovak Government abroad has equipped itself with as many of the necessary organs of State control as the limitations due to its exile on foreign soil allowed.

#### *Conclusion.*

The framers of the Czechoslovak Constitution naturally could not foresee events which lay twenty years ahead. They obviously could not provide for the fact that the constitutional organs of the Republic might

find themselves called upon to function in a situation so anomalous as this. They have had unusual and sometimes trying problems to deal with. Yet despite all this Czechoslovak democracy has been able to cope effectively with the enormous difficulties with which it has been confronted. It should be well noted that hardly any democratic system in the world has been called upon to pass through so great an ordeal in so short a time. Czechoslovak democracy is too deeply rooted in the thoughts and hearts of the Czechoslovak people to be torn up by any storm.

## CHAPTER X

### A GENERAL APPRECIATION OF CZECHOSLOVAK DEMOCRACY AND ITS PROSPECTS FOR THE FUTURE

#### *General Appreciation.*

If it is true that the supreme test of a successful Government lies in its practical achievements, then Czechoslovak parliamentary democracy has passed the test with flying colours. It is indeed considered to be one of the best developed in the world by those foreign students of government who have given it a close and objective study.

Czechoslovakia was able to combine in a balanced and systematic whole the two chief postulates of democratic government—freedom and order. It is undeniable that great skill is required to attain the necessary equilibrium between these two tendencies, each of which pulls in a different direction. Up to the present the mature fruits of this art have been vouchsafed only in a small degree to the peoples of the earth.

What, however, principally interests students of government is to see what institutions shared in this Czechoslovak success in parliamentary government, and to what extent. And here it must be observed that this success, in my opinion, is mainly due to factors which have not, as a matter of fact, much to do with the written rules of the Constitution, and which in some cases have even developed in opposition to them.

The first contributing factor was the influence and personality of both Czechoslovak Presidents, T. G. Masaryk and Dr. Edward Beneš. A good beginning is of great importance for any human enterprise. It is perhaps all the more so when a nation begins its free life and starts to lay the foundations of its political institutions. A great deal depends upon how it begins, what sort of tradition is being created, and with what material the framework of the constitutional house is filled. It was therefore extremely fortunate for Czechoslovakia that this enormous task fell to individuals having the personal, moral and political strength shown by T. G. Masaryk and his pupil Dr. Beneš. Democracy depends very much on having the right leaders, and Czechoslovakia is a striking practical confirmation of this principle. The big share the Head of the State had in the shaping of Czechoslovak democracy is all the more remarkable since, as we have seen, the President's legal position as defined by the makers of the Czechoslovak Constitution is much more restricted than that of the French President, whose lack of power is proverbial.

Even the great leadership of Masaryk and Beneš, however, would not

have helped, had not the Czechoslovak people been so well fitted by nature for democratic government. Among their good qualities, which helped them to establish their democracy and to maintain it in full power until Munich struck it down for a season, we ought to mention their healthy practical realism, their pragmatic approach to the problems of life, their pronounced love of freedom and obstinate dislike of dictatorship, their respect for the rights of minorities, the high standard of collective discipline, a developed sense of justice, and a cultural and political maturity combined with a lively interest in public affairs. These characteristics largely outweigh such Czechoslovak faults as excitability, a certain tendency to envy and jealousy, and an occasional inclination towards doctrinal bickering.

As we remarked in the introduction, there are very few really rich and really poor individuals in Czechoslovakia. On the other hand, there is a very broad middle-class of fairly well paid workmen, small farmers, tradesmen and craftsmen, as well as the moderately paid public servants and private clerks. There is a healthy balance between agriculture and industry. There are no emphasized religious differences, no insurmountable political differences on fundamentals. These conditions are very favourable for the functioning of democracy. Though it may sound a paradox in a sense, the presence of considerable national minorities had a beneficial effect. Their initial negative attitude towards the State unified the Czechoslovak parties, and their unity was further intensified by the threat from abroad which loomed over the Republic from the time of Hitler's advent to power. No wonder then that compromise became the keystone of Czechoslovakia's political life and one of the fundamental causes underlying the success of her parliamentary government. Finally, rigorous party discipline simplified party diversity and made stable government possible. The way in which this discipline was enforced was very drastic indeed, but it was undoubtedly a medicine, though bitter and unpalatable, which acted as an antidote by neutralizing the otherwise paralysing effects of party-political exuberance, thereby performing a useful function within the framework of Czechoslovak democracy.

These, however, are either matters which the Constitution itself did not regulate, or in which political practice developed rather differently from what was intended or expected by the makers of the Constitution. In saying this, I do not want to cast the least slur on the authors of the Czechoslovak 1920 Constitution. They gave the State a very good framework on which experience has shown it was possible to build. It was a framework which persisted successfully through a difficult eighteen years. Indeed, one cannot but marvel at the excellent way in which the framers of the Constitution did their work, if we bear in mind that they

had no constitutional tradition of their own upon which to draw except the experience of a year and a half with a provisional Constitution. All that it is desired to suggest is that in view of the "pre-requisites" which already existed in Czechoslovakia, any well-designed system of modern democracy, whether parliamentary or presidential, could in my view have worked there with a good measure of success.

*Prospects for the Future.*

What of the future? We can give only a few rough indications, and any general estimate must be individual and subjective, since we are leaving the known province *legis latae*, and are entering the unknown sphere *legis ferendae*.

#### A. PROBLEMS RAISED BY THE POLITICAL PARTY SYSTEM

First of all the new Czechoslovakia will have to strengthen those girders which have so far supported its political structure. It is imperative that the political parties must be reduced in number if the former defects are to be removed.

The will to do this is already there. Reports coming from Czechoslovakia since the outbreak of the war have shown beyond doubt that Czechoslovak people, whatever their political tendencies, are determined not to return to the former party divisions. This view has been fully shared by all abroad. President Beneš strongly denounces the evils resulting from an excessive number of parties in his *Democracy Today and Tomorrow*, and characterizes their reduction as "a manifestation of real patriotic statesmanship." He recommends a simple division of Left and Right, with a centre party to hold the balance.

This reduction can be realized only by agreement between the parties, through the pressure of public opinion and the influence of the Head of the State, that is, by extra-constitutional means. But most Czechoslovaks agree that, once it is achieved, it should be guaranteed constitutionally. Different views prevail in Czechoslovak circles as to how it should be done. According to one school of thought it should be sufficient to replace the present system of proportional representation either by a majority system with single-member constituencies on the British model or by a system based on the alternative vote. Another group disapproves of the majority system as being inadequate, and they would prevent the emergence of too many parties by insisting that new ones could come into being only with the consent of a constitutional body such as Parliament. This proposal, a novelty in constitutional practice, was first made by Dr. Beneš in his *Democracy Today and Tomorrow*.

With the radical reduction in the number of political parties, drastic enforcements of party discipline such as were usual in pre-Munich Czechoslovakia would become largely unnecessary. It would not be necessary, reasonable or just to adhere to the practice of depriving M.P.s of seats as was done by the Czechoslovak Electoral Court. For the maintenance of the necessary degree of party discipline, which of course is in itself an asset for every true democracy, normal methods would suffice, as in Britain.

Finally, if only two or at the most three parties remained in being, suitable conditions would be created for the operation of the "swing of the pendulum." A periodical alteration of tendencies, and an effective opposition, able to form an alternative government, would be thus assured.

#### B. SHOULD THE RÉGIME BE PARLIAMENTARY OR PRESIDENTIAL?

The second problem is whether the new Czechoslovakia is to be built on the existing foundations of a parliamentary régime or whether some sort of a presidential régime is to be desired.

In the early 1930's doubts were expressed as to whether Czechoslovakia had acted wisely in 1920 by adhering to the classical type of parliamentary democracy. In Czechoslovakia the political responsibility of the Government to Parliament did create difficulties, although they were not so acute as in other parliamentary democracies, such as France. It was felt also that the political responsibility of the Executive to the Legislature was enhancing the hold of political parties on the administration, and that this hold was accompanied by the various excesses which we have described earlier. All but a few party leaders welcomed the active intervention of T. G. Masaryk and Dr. Beneš in the conduct of the affairs of the State. Though the fact was not realized by the common man, the trend was away from parliamentary democracy in the direction of presidential democracy. The intention of those who were conscious of the development and understood its constitutional implications was to carry the trend to its logical conclusion.

It may therefore prove that the question will be very much in the foreground in future discussions, and that the future Constituent Assembly will have to decide whether, in solving the crucial problem of the relation between the Executive and the Legislature, it will abide by parliamentary democracy on the Franco-British pattern or draw on the experience of the presidential democracy of the U.S.A. Dr. Beneš in his book has called attention to the American model on several occasions.

### C. DECENTRALIZATION AND SELF-GOVERNMENT

This is the third class of constitutional problems which Czechoslovak legislators will have to deal with immediately after the war. For, as is made clear by the survey contained in Chapter VI, a considerable increase of lay participation in local government will certainly be demanded in Czechoslovakia after this war. We have already described in Chapter VI the sweeping reforms achieved by the presidential Decree of December 1944. Its contents speak for themselves and make clear beyond doubt the tendency which is likely to be followed in the future reform of the Czechoslovak local administration. It is not therefore necessary to say anything more about this question here.

### D. AMPLIFICATION OF SOCIAL RIGHTS AND REORGANIZATION OF NATIONAL ECONOMY

We have shown in Chapter VII that although Czechoslovakia dealt with social and economic problems more courageously than most other democracies, she too did not succeed in dealing with all those vital issues on whose satisfactory solution the whole future of modern democracy may well depend. After this war an attempt will no doubt be made to implement the pre-1938 constitutional order with further provisions and institutions likely to meet the new problems that will arise. An all-round overhaul of the social insurance system; a guaranteed right to work and to adequate pay for that work; the establishment of a central planning board with specific powers to fix the general framework of economic reconstruction and to direct its gradual phases—these will no doubt be the main lines of reform and of the adaptation of old rules to new social needs.

Though such matters as these are likely to be the main problems of constitutional reform after the war, there will of course be other less radical issues to settle. The question will no doubt arise as to whether the Head of the State is to be elected by the Legislature or by popular election. Efforts are bound to be made to get rid of the dangerous dualism of Executive power. A change in the system of fixed-order lists of candidates may come up for consideration. There will have to be some alterations in the system of administrative justice. Yet, however helpful a better solution of these questions may be for improved working of the new Czechoslovak democracy, the vital issue, the essential concomitant of further improvement is the manner in which those main problems referred to above under A-D are solved. If it should prove to be

possible under a new system to eliminate those defects which have so far existed in these four directions, then Czechoslovakia will become a model of modern democracy. It will be able to set itself up as a State which has in its Constitution reconciled to the fullest possible degree the old and splendid heritage of individual freedom with the new postulates of social security. Then indeed it will have solved the most difficult problem of government which has faced the world's democracies ever since the modern liberal State broke the fetters of absolutist rule.



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